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**THE**  
**LAW OF CARRIERS**  
**BY LAND.**

***THIRD EDITION.***



THE  
LAW OF CARRIERS  
OF  
MERCHANDISE AND PASSENGERS  
BY LAND.

BY  
WALTER HENRY MACNAMARA,  
OF THE INNER TEMPLE, BARRISTER-AT-LAW: REGISTRAR TO THE RAILWAY COMMISSION  
A MASTER OF THE SUPREME COURT

THIRD EDITION

BY  
W. A. ROBERTSON, B.A.,  
OF THE INNER TEMPLE, BARRISTER-AT-LAW. LATE SCHOLAR OF CHRIST CHURCH, OXFORD  
AND  
ARCHIBALD SAFFORD,  
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

"The Law does not consist of particular cases, but of general principles, which are  
illustrated and explained by those cases." LORD MANSFIELD.

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## PREFACE TO THE THIRD EDITION.

IN consequence of the regretted death of Master Macnamara, the duty of preparing this edition has devolved upon the present Editors, the senior of whom was in part responsible for the preceding edition.

Since that edition was published sixteen years have elapsed, during which period the law relating to the subject-matter of this work has been materially altered, so much so indeed that a large part of the book has had to be re-written. In particular the Railways Act of 1921 has fundamentally changed the position of Railway Companies, both in respect of their constitution as well as of their charging and contractual powers.

Standard rates and fares, as well as standard conditions of carriage, are being, or have been, fixed by a newly-constituted Court, the Railway Rates Tribunal, under the powers of the above Act, but these will not come into operation until a day or days to be fixed by that body. In the meantime the charges in force on the 15th August, 1921, are continued, with power to the

Tribunal to modify the same, while the law as to the conditions of railway carriage for the time being remains unchanged.

The Editors confess that they have felt a difficulty in dealing with the position thus created. On the one hand they recognized that it would be an advantage to give an existing rather than what must be in some respects a prospective view of the law. To do so would have involved the postponement of publication until "the appointed day," which, owing to the complicated nature of the necessary preliminary investigation, cannot be fixed for a considerable time. On the other hand, the last edition of this work has been out of print for some time, and there is an insistent demand for a new edition.

A solution of the problem has been attempted by setting out the material provisions of the Railways Act along with their present and future effect, and also by stating the former law when and so far as this has appeared to be necessary. It is hoped that by this means no difficulty will be experienced in ascertaining the state of the law both during and after the present period of transition.

The part of the work dealing with the general law of Carriers has been completely revised and, in many

instances, re-written. Every effort has been made to include all relevant cases decided since the publication of the last edition, and also to eliminate older authorities of doubtful present value. It has thereby been rendered possible not to increase the bulk of the volume.

It is hoped that the present work will be found to be a worthy successor of previous editions and will prove to be of service not only to members of the legal profession, but to all who are interested in land transport.

W. A. R.

A. S.

*December, 1924.*





**EXTRACT FROM**  
**PREFACE TO THE FIRST EDITION.**

THIS work is an attempt to reduce the statute and case law of carriers by land into a code or series of articles. The writer originally intended to confine the articles themselves entirely to principles, and to make a scientific treatise on this particular branch of the law of bailments; but he found that to carry out this principle strictly would be to make the work far less useful to those interested in the law relating to the transit by railway of merchandise and passengers, and therefore it is that many of the articles, though important in themselves, are only examples of a principle contained in a previous article. To this extent the writer has laid himself open to the objection of not having given effect to the dictum of Lord Mansfield, set out on the title page of the book. For the same reason, in many of the articles dealing with statutory enactments, the verbatim words of the Act of Parliament are set out instead of the effect of them.

Whether this branch of mercantile law is capable of codification is a matter upon which there must be a diversity of opinion. If codification is ever thought feasible or desirable, the writer is ambitious enough to hope that this Digest may afford facilities for that operation. At all events, by throwing the whole law of carriers by land into a systematic form, it enables the law reformer to criticise it as a whole, and to appreciate the nature and effect of the amendments which it may require.

W. H. M.

*November, 1888.*



## TABLE OF CONTENTS.

---

	PAGE
TABLE OF CASES CITED .....	xv

---

### PART I.

#### CARRIERS BY LAND GENERALLY.

---

##### CHAPTER I.

CARRIERS WITHOUT HIRE .....	1
-----------------------------	---

---

##### CHAPTER II.

PRIVATE CARRIERS FOR HIRE .....	6
---------------------------------	---

---

##### CHAPTER III.

COMMON CARRIERS .....	11
-----------------------	----

---

##### CHAPTER IV.

DELIVERY TO AND ACCEPTANCE BY THE CARRIER .....	23
---	----

---

##### CHAPTER V.

OBLIGATIONS OF A CARRIER DURING THE TRANSIT OF THE GOODS .....	37
--	----

---

##### CHAPTER VI.

LIMITATION OF THE LIABILITY OF A COMMON CARRIER .....	49
---	----

## CHAPTER VII.

	PAGE
DELIVERY OF THE GOODS TO THE CONSIGNEE .....	72

## CHAPTER VIII.

THE RIGHTS OF THE CARRIER .....	82
---------------------------------	----

## CHAPTER IX.

THE RIGHTS OF THE SELLER AND BUYER OF THE GOODS IN RELATION TO THEIR CONVEYANCE BY A CARRIER .....	92
---	----

## PART II.

## CARRIAGE OF MERCHANDISE BY RAILWAY.

## CHAPTER X.

DELIVERY TO A RAILWAY COMPANY .....	107
-------------------------------------	-----

## CHAPTER XI.

CONTRACT OF CARRIAGE BY RAILWAY .....	132
---------------------------------------	-----

## CHAPTER XII.

TRANSIT OF GOODS ON THE RAILWAY .....	165
---------------------------------------	-----

## CHAPTER XIII.

DELIVERY BY THE RAILWAY COMPANY .....	180
---------------------------------------	-----

## PART III.

## RAILWAY RATES AND CHARGES.

## CHAPTER XIV.

THE RAILWAY RATES TRIBUNAL .....	208
----------------------------------	-----

## CHAPTER XV.

STANDARD CHARGES .....	221
------------------------	-----

## TABLE OF CONTENTS.

xiii

### CHAPTER XVI.

	PAGE
EXCEPTIONAL CHARGES—EXISTING RATES .....	236

### CHAPTER XVII.

OTHER CHARGES .....	253
---------------------	-----

### CHAPTER XVIII.

DISINTEGRATION AND PUBLICATION OF EXCEPTIONAL RATES .....	262
---	-----

### CHAPTER XIX.

MISCELLANEOUS PROVISIONS AS TO RATES .....	273
--	-----

### CHAPTER XX.

REMUNERATION FOR CARRIAGE OF POST OFFICE MAILS .....	307
--	-----

## PART IV.

### RAILWAY FACILITIES AND UNDUE PREFERENCE.

#### CHAPTER XXI.

REASONABLE FACILITIES .....	312
-----------------------------	-----

#### CHAPTER XXII.

THROUGH RATES AND FARES .....	347
-------------------------------	-----

#### CHAPTER XXIII.

EQUALITY OF TREATMENT—UNDUE PREFERENCE .....	366
--	-----

## PART V.

#### CHAPTER XXIV.

THE CARRIAGE OF ANIMALS BY RAILWAY .....	416
--	-----

## PART VI.

## CHAPTER XXV.

	PAGE
CARRIAGE OF PASSENGERS' LUGGAGE BY RAILWAY .....	436

## PART VII.

## CARRIAGE OF PASSENGERS BY RAILWAY.

## CHAPTER XXVI.

PROVISION OF TRAINS AND ACCOMMODATION FOR PASSENGERS .....	469
--	-----

## CHAPTER XXVII.

PASSENGER FARES AND BYE-LAWS .....	503
------------------------------------	-----

## CHAPTER XXVIII.

LIABILITY FOR NEGLIGENCE .....	528
--------------------------------	-----

## PART VIII.

## CARRIAGE OF PASSENGERS BY ROAD.

## CHAPTER XXIX.

CARRIERS OF PASSENGERS BY STAGE AND HACKNEY CARRIAGES .....	571
---	-----

## APPENDIX.

STANDARD TERMS AND CONDITIONS OF CARRIAGE .....	597
---	-----

## TABLE OF CASES.

A.		PAGE
Abbott v. N. B. Ry. Co. ....		562
Abram Coal Co. v. G. C. Ry. Co. ....		890, 899, 101
Acton v. Castle Mail Packet Co. ....		164, 464
Adams v. L. & Y. Ry. Co. ....		569
Adderley v. G. N. Ry. Co. of Ire- land .....		528, 534
Agrell v. L. & N. W. Ry. Co. ....		149
Aitken v. N. B. Ry. Co. ....		562
Aldridge v. G. W. Ry. Co. ....		141, 145, 147, 158, 169, 176, 467
Alexander v. N. E. Ry. Co. ....		527
Allday v. G. W. Ry. Co. ....		148, 422, 431, 432
Alton v. Mid. Ry. Co. ....		536
Amies v. Stevens .....		40, 43, 430
Anderson v. Mid. Ry. Co. ....		415
v. N. E. Ry. Co. ....		468
Anderton v. River Weaver Trus- tees .....		403
Anglo-American Oil Co. v. Cal. Ry. Co. ....		382, 397, 398
Angus v. L. T. & S. Ry. Co. ....		555
Ansell v. Waterhouse .....		11, 12
Anthony v. Mid. Ry. Co. ....		562
Arnold v. Jefferson .....		82
Ashendon v. L. B. & S. C. Ry. Co. ....		141, 142, 148
Ashton v. L. & Y. Ry. Co. ....		500
Associated Portland Cement Co. v. G. N. Ry. Co. ....		247
Astey v. Emery .....		94
Aston v. Heaven .....		13, 484, 573
Atherton v. L. & N. W. Ry. Co. .....		563, 565
Att.-Gen. v. Birm. & Derby Junc. Ry. Co. ....		368
v. Furness Ry. Co. ....		478
v. G. W. Ry. Co. ....		553
v. L. & N. W. Ry. Co. ....		519
v. Manchester Corpora- tion .....		15
v. Mersey Ry. Co. ....		485
Austin v. G. W. Ry. Co. ....		176, 530, 643
v. M. S. & L. Ry. Co. ....		65
Ayles v. S. E. Ry. Co. ....		555
Ayr Harbour Trustees v. Glasgow & S. W. Ry. Co. ....		363
Ayrshire, &c. Ry. Co. v. G. & S. W. Ry. Co., &c. Joint Com- mittee .....		391
B.		PAGE
Bailey v. L. C. & D. Ry. Co. ....		265
Baker v. Ellison .....		572, 575
Baldwin v. L. C. & D. Ry. Co. ....		113
Bamfield v. Goole Transport Co. .....		33, 122
Bank of New South Wales v. Owston .....		130
Barbour v. S. E. Ry. Co. ....		31
Barclay v. Cucculla-y-Gana ..		18, 44
v. Beygona .....		44
Barker v. Mid. Ry. Co. ....		413, 486
Barnes v. Marshall .....		84
Barny v. Mid. Ry. Co. ....		517
Barr, Moering & L. & N. W. Ry. Co. ....		127
Barr & Sons v. Cal. Ry. Co. ....		174
Barratt v. G. N. Ry. Co. ....		173
Barret v. G. N. and Mid Ry. Cos. .....		326, 341
Barry Ry. Co. v. Taff Vale Ry. Co. ....		315
Bastable v. Metcalf .....		500, 579
v. N. B. Ry. Co. ....		156
Bates v. Cameron & Co. ....		185
Batson v. Donovan .....		23, 24, 26, 31, 187
Baxendale and Others v. Eastern Counties Ry. Co. ....		84
v. G. E. Ry. Co. ....		7, 14, 59, 66, 109, 187
v. G. W. Ry. Co. (Bristol Case) .....		406



	PAGE		
Baxendale v. G. W. Ry. Co. (Reading Case) .....	200,	Booth Steamship Co. v. Cargo Fleet Iron Co. ....	104, 105
———— v. Hart .....	257, 408, 414	Bourne v. Gatoliff .....	74, 77
———— v. L. & S. W. Ry. Co. ....	55, 58	Boyd v. G. N. of I. Ry. Co. ....	546, 548
———— v. N. Devon Ry. Co. ..	408	Boys v. Pink .....	55
Beadell v. E. C. Ry. Co. ....	326, 412	Brabant v. King .....	46
Beal v. S. Devon Ry. Co. ....	142,	Brackley v. Mid. Ry. Co. ....	547
————	143, 145	Bradburn v. G. W. Ry. Co. ....	569
Beauchamp v. Powley .....	595	Bradley v. Waterhouse .....	32, 43
Becher v. G. E. Ry. Co. ....	445	Bradshaw v. Irish N. W. Ry. Co. ....	198
Beck v. Evans .....	31, 42	Branley v. S. E. Ry. Co. ....	84, 84, 372
Beer v. Walker .....	99	Brass v. Maitland .....	122
Beeston Brewery Co. v. Midland Ry. Co. (No. 1) .....	331, 401, 402	Bremner v. Williams .....	575
Beeston Brewery Co. v. Midland Ry. Co. (No. 2) .....	331	Bretherton v. Wood .....	484
Behrens v. G. N. Ry. Co. ....	58	Briddon v. G. N. Ry. Co. ....	39, 75, 169, 430
Belfast and Ballymena Ry. Co. v. Kcys .....	441, 442	Bridges v. N. L. Ry. Co. ....	556, 561, 563
Belfast Central Ry. Co. v. G. N. Ry. Co. (Ireland) .....	356, 362	Brind v. Dale .....	8, 9
Belfast Central Ry. Co. v. G. N. Ry. Co. (Ireland) (No. 3) .....	355	Bristol and Exeter Ry. Co. v. Collins .....	28, 169, 171, 172
Belfast Ropework Co. v. Bushell. ....	6, 11	Britten v. G. N. Ry. Co. ....	441
Bell v. Cal. Ry. Co. ....	548	British Portland Cement Manufacturers v. G. E. Ry. Co. ....	270
—— v. G. N. Ry. Co. of Ireland. ....	568	Brown v. G. E. Ry. Co. ....	518
Bellsdyke Coal Co. v. N. B. Ry. Co. ....	407	—— v. G. W. Ry. Co. ....	271
Benett v. P. & O. Steamboat Co. ....	11, 484	Brunner, Mond & Co. v. Cheshire Lines Committee .....	354
Benson v. Furness Ry. Co. ....	557	Brunt v. Mid. Ry. Co. ....	51
Bentham v. Hoyle .....	517	Buchan v. N. B. Ry. Co. ....	527
Bergheim v. G. E. Ry. Co. ....	446	Buckman v. Levi .....	27, 95
Berndtson v. Strang .....	103	Buckmaster v. G. E. Ry. Co. ....	498
Bernstein v. Baxendale .....	50, 52	Bull v. Robison .....	98
Berry v. L. O. & D. Ry. Co. ....	265, 305	Bullen v. Swan Electric Engraving Co. ....	1
Bethell v. Clark .....	101	Bulmer v. Bulmer .....	540
Biddell Bros. v. Clemens Horst Co. ....	95	Burke v. S. E. Ry. Co. ....	170, 490, 497
Riggs v. G. E. Ry. Co. ....	527	Burnard and Alger v. G. W. and L. & S. W. Ry. Cos. ....	392
Bilbee v. L. B. & S. C. Ry. Co. ....	566	Burns v. N. B. Ry. Co. ....	532
Birchgrove Steel Co. v. Mid. Ry. Co. ....	266	Burrell v. North .....	29, 58
Bird v. Brown .....	103	Bushol v. Wheeler .....	93
—— v. G. N. Ry. Co. ....	555	Butcher v. L. & S. W. Ry. Co. ....	462
Birmingham & Mid. Motor Omnibus Co. v. Thomson .....	586	Butler v. M. S. & L. Ry. Co. ....	515
Black & Sons v. Cal. Ry. Co. ....	247	—— v. Woolcott .....	87
Blackpool & Fleetwood Tramway Co. v. Bailey .....	585	Butt v. G. W. Ry. Co. ....	51
Blamires v. L. & Y. Ry. Co. ....	482	Butterley Co. v. Mid. Ry. Co. ....	247
Blankensee v. L. & N. W. Ry. Co. ....	53	Butterworth v. Brownlow ..	43, 45, 191
Blower v. G. W. Ry. Co. ....	40, 41, 42, 427, 428, 430	Bygraves v. Dicker .....	588
Blyth v. Birmingham Waterworks Co. ....	39	Byrne v. G. S. & W. Ry. Co. ....	568
Bollands v. M. S. & L. Ry. Co. ....	180		
Bolton v. L. & Y. Ry. Co. ....	102		

## C.

Cahill v. L. & N. W. Ry. Co. ....	441, 442, 443
Cairns v. N. E. Ry. Co. ....	260
—— v. Robins .....	74, 77
Calcutta Co. v. De Mattos .....	97

# TABLE OF CASES.

XLII

	PAGE
Cal. Ry. Co. v. Cross .....	394
— v. Groenock and Wemyss Bay Ry. Co. ....	362, 363
— v. Guild .....	206
— v. Hunter & Co. ....	124
— v. Muirhead Trawlers .....	283
— v. Mulholland .....	166
— v. N. B. Ry. Co. ....	360
— v. Stein & Co. ....	289, 296
— v. Walmsley .....	546
Campbell v. Cal. Ry. Co. ....	460
Canadian & Pacific Ry. Co. v. Parent .....	491
Canadian & Pacific Ry. Co. v. Roy .....	553
Candy v. Mid. Ry. Co. ....	185
Cannon v. Mid. G. W. Ry. Co. ..	565
Cargo ex "Argos" .....	47
Carr v. L. & N. W. Ry. Co. ....	31
— v. L. & Y. Ry. Co. ....	24, 25, 28, 417
Carriekfergus, &c. Commrs. v. Belfast & Northern Counties Ry. Co. ....	414
Cass v. Storey .....	591
Cass v. Edinburgh & District Tramways Co. ....	574
Casswell v. Cheshire Lines Committee .....	452
Castle Steam Trawlers, Ltd. v. G. W. Ry. Co. ....	379, 381, 401
Catherham Ry. Co. v. L. B. & S. C. and S. E. Ry. Cos. ....	321, 414
Central Wales, &c. Ry. Co. v. G. W. Ry. Co. ....	351, 356, 359
Central Wales, &c. Ry. Co. v. L. & N. W. and G. W. Ry. Cos. ....	358
Chance and Hunt v. G. W. Ry. Co. ....	290, 376, 385, 396, 414
Chapman v. G. W. Ry. Co. ....	77, 194, 196, 198
Charles Wade & Co. v. L. & N. W. Ry. Co. ....	140
Charrington v. L. & N. W. Ry. Co. ....	275
Charrington v. Mid. Ry. Co. ....	374, 396, 399
Chase v. Westmore .....	88
Chattock & Co. v. Bellamy & Co. ....	21
Cheshire v. Bailey .....	45
Cheshire Lines Committee v. John Butler & Co. ....	316
Chippendale v. L. & Y. Ry. Co. ....	417
Christie v. Griggs ...	13, 484, 528, 555, 573, 575, 576
Clark v. N. B. Ry. Co. ....	551
Clarke v. Hutchins .....	94
— v. West Ham Corporation. ....	13, 16, 23, 38, 484, 571, 575

	PAGE
Clayton v. Hunt .....	57
Clonmel Traders, &c. v. Waterford & Lim. Ry. Co. ....	270
Coats v. Chaplin .....	96, 97
Cobb v. G. W. Ry. Co. ....	534
Cobden v. Bolton .....	67
Cockle v. S. E. Ry. Co. ....	560, 561
Coggs v. Bernard .....	1, 2, 3, 5, 8, 11, 12, 17, 37, 43, 484
Cohen v. S. E. Ry. Co. ....	436, 444, 453, 456
Coldman v. Hill .....	9, 47, 85
Colochepper v. Good .....	29
Collard v. S. E. Ry. Co. ....	183
Collet v. L. & N. W. Ry. Co. ....	530
Colman v. G. E. Ry. Co. ....	266
Comb v. L. & S. W. Ry. Co. ....	430
Consolidated Tea Co. v. Oliver's Wharf .....	17, 21, 22
Cooke v. Mid. Ry. Co. ....	492, 494
— v. Mid. G. W. Ry. Co. of Ireland .....	544, 546
— v. Wilson .....	465
Coombs v. B. & Ex. Ry. Co. ....	96, 97
Cooper, <i>Ex parte</i> .....	88, 103
— v. Cal. Ry. Co. ....	569
— v. L. & S. W. Ry. Co. ..	409
Copland v. Brogan .....	4
Corby v. Hill .....	552
Cork Distilleries Co. v. Gt. S. & W. Ry. Co. (Ireland) .....	73, 97, 189, 190
Cornman v. E. C. Ry. Co. ....	564
Corporation of Arbroath v. Cal. and N. B. Ry. Cos. ....	321
Corporation of Birmingham and Others v. Mid. Ry. Co. ....	214, 277, 284, 289, 401
Corporation of Birmingham and Others v. M. S. & L. Ry. Co. ..	359
Corporation of Dover v. S. E. and L. C. & D. Ry. Cos. ....	413
Corporation of Nottingham v. Mid. Ry. Co. ....	319, 322, 326, 327
Corrigan v. G. N. and M. S. & L. Ry. Cos. ....	151
Cotterill v. Starkey .....	577
Covington v. Willan .....	40, 54
Cowan v. N. B. Ry. Co. (No. 1). ....	285, 288, 304
— v. — (No. 2). ....	331, 402
— v. — (No. 3). ....	280, 300, 397
Cowdenbreath Coal Co. v. Cal. and N. B. Ry. Cos. ....	278, 314
Coxon v. N. E. Ry. Co. ....	266
Crafter v. Met. Ry. Co. ....	563
Craik v. Wood .....	585
Cramb v. Cal. Ry. Co. ....	557



# TABLE OF CASES.

xix

## F.

	PAGE
Fairweather & Co. and Others v. Corp. of York .....	373, 391
Farrar v. Adams .....	42
Fawcett Assoc. and L. B. & S. C. Ry. Co., <i>In re</i> .....	480
Federation of British Music Industries v. Cal. Ry. Co. ....	250
Field v. Newport, Aber. and Hlors. Ry. Co. ....	206, 281
Finlay v. N. B. Ry. Co. ....	185
Firth v. N. E. Ry. Co. ....	462
Fishbourne v. G. S. & W. Ry. Co. ....	201, 256
Fitzgerald v. Mid. Ry. Co. ....	492, 497
Flower v. L. & N. W. Ry. Co. ....	490, 491, 540
Flowers v. S. E. Ry. Co. ....	51
Ford v. L. & S. W. Ry. Co. ....	409
Forder v. G. W. Ry. Co. ....	154, 155
Foreman v. G. E. Ry. Co. ....	384, 399
Forth Bridge and N. B. Ry. Cos. v. G. N. of S. Ry. Co. and Others .....	352, 364
Forward v. Pittard .....	12, 35, 38, 39, 40, 43, 44
Forwood v. G. N. Ry. Co. ....	397
Foster v. G. W. Ry. Co. ....	167
Foster Bros. v. G. E. Ry. Co. ....	286, 287, 288, 293, 303, 333
Foulkes v. Met. Dist. Ry. Co. ....	176, 177, 460, 529
Fowler v. N. B. Ry. Co. ....	532
Fraser v. Cal. Ry. Co. ....	566
Freeman v. Birch .....	96, 97
French v. Hills Plymouth Co. ....	550
Furness Ry. Co. v. Vickers, Sons and Maxim, Ltd. ....	287

## G.

Galbraith and Grant, Ltd. v. Block .....	77, 95
Gallagher v. G. W. Ry. Co. ....	150
Gallin v. L. & N. W. Ry. Co. ....	541
Garnett v. Willan .....	76
Garside v. Trent Nav. Co. ....	78
Garton v. Bristol and Ex. Ry. Co. ....	23, 25, 28, 67, 109, 112, 146, 203, 257
—— v. G. W. Ry. Co. ....	200, 203
Gates v. Bill .....	574
Geddis v. Props. of Bann Reservoir .....	552
Gee v. Met. Ry. Co. ....	556, 559, 560
General Electric Co. v. Evans ..	128
Gibaud v. G. E. Ry. Co. ....	466, 468
Gibbon v. Paynton .....	32
Giblin v. McMullen .....	4

Gilbart v. Dale .....	59, 459
Gilbert v. N. L. Ry. Co. ....	531
Gilbey v. G. N. Ry. Co. ....	442
Gill v. M. S. & L. Ry. Co. ....	43, 168, 427, 428
Gillingham v. Walker .....	508
Gilmour v. N. B. Ry. Co. ....	325
Gilstrap v. G. N. & Mid. Ry. Cos. ....	280, 291
Girardot v. G. E. Ry. Co. ....	265
—— v. Mid. Ry. Co. (No. 2) ..	331, 401
Girdwood v. N. B. Ry. Co. ....	565
Gishbourne v. Hirst .....	11
Glamorganshire C. O. v. G. W. Ry. Co. ....	320
Glasgow & S. W. Ry. Co. v. Dallochney Coal Co. ....	296
Glasgow & S. W. Ry. Co. v. Polquhain Coal Co. ....	296
Glennavon Garw Collieries, Ltd. v. Rhondda & Swansea Bay Ry. Co. ....	271, 355, 358, 363
Glover v. L. & N. W. Ry. Co. ....	789
—— v. L. & S. W. Ry. Co. ....	516
Goff v. G. N. Ry. Co. ....	129
Gogarty v. G. S. & W. Ry. Co. ....	61
Golden v. Manning .....	76, 77
Gordon v. G. W. Ry. Co. ....	151, 431, 434
Gosling v. Higgins .....	76
Gould v. S. E. & C. Ry. Co. ....	31
Graham v. Belfast & N. Counties Ry. Co. ....	154, 155
Grand Trunk Ry. Co. v. Barrett..	4, 177, 543
—— v. McAlpine .....	550
—— v. Robinson .....	491
Gray v. Cal. Ry. Co. ....	532
Grayson, Lowood, Ltd. v. G. C. Ry. Co. ....	408, 415
G. C. Ry. Co. v. L. & N. W. Ry. Co. ....	324, 327, 343, 345
—— v. L. & Y. Ry. Co. ....	345, 346, 361
G. E. Ry. Co. v. Lord's Trustees. ....	90, 206
G. N. Ry. Co. v. G. C. Ry. Co. ....	325
—— v. Harrison .....	580
—— v. L.E.P. Transport, Ltd. ....	7, 12, 14, 33, 59, 107, 109, 110, 122
—— v. Morville .....	28, 65, 66, 136
—— v. Palmer .....	521
—— v. Swaffield .....	47, 79, 85, 86, 194, 195, 434

	PAGE
G. N. Ry. Co. v. Winder .....	520
G. N. Ry. Co. (Ireland) v. Belfast Central Ry. Co. ....	356
G. N. Ry. Co. (Ireland) v. Donegal Ry. Co. ....	356, 364
G. N. Ry. Co. (Ireland) v. Postmaster-General .....	311
G. N. of S. Ry. Co. v. Highland Ry. Co. ....	343
Gt. S. & W. Ry. Co. v. City of Cork Steam Packet Co. ....	267, 365
Gt. S. & W. Ry. Co. v. Dublin & S. E. Ry. Co. ....	270, 360, 362, 386
Gt. S. & W. Ry. Co. v. Horrigan .....	426
Gt. S. & W. Ry. Co. v. Wallace Bros., Ltd. ....	283, 292, 299
G. W. Ry. Co. v. Dagge .....	84
----- v. Barry Ry. Co. ....	315
----- v. Blake .....	492
----- v. Bunch .....	14, 15, 436, 446, 447, 448, 449, 451
----- v. Caswell & Bowden, Ltd. ....	274, 281
----- v. Central Wales, &c. Ry. Co. ....	353
----- v. Dafen Tinplate Co. ....	284, 295, 296
----- v. Dublin & S. E. Ry. Co. ....	352, 356, 362, 372
----- v. Evans .....	440
----- v. Goodman .....	439
----- v. Laing .....	284, 297
----- v. Lowe .....	274
----- v. McCarthy .....	154, 435
----- v. Phillips .....	275, 300
----- v. Postmaster-General .....	309
----- v. Ry. Com. and Brown .....	261, 328
----- v. Severn & Wye Ry. Co. ....	357, 361
----- v. Sutton .....	24, 25, 123, 367, 368, 371
----- v. Wills .....	75, 188
----- and Mid. Ry. Co. v. Bristol Port Ry. & Pier Co. ....	324, 342
Greenock and Wemyss Bay Ry. Co. v. Cal. Ry. Co. (No. 3) ...	351, 353, 362, 373
Greenop v. S. E. Ry. Co. ....	404
Gregory v. West Mid. Ry. Co. ....	147
Guernsey Mutual Transport Co. v. L. B. & S. C. Ry. Co. ....	383, 402, 403
Gunyon v. S. E. & C. Ry. Co. ....	68, 167, 168

	PAGE
Hadley v. Baxendale .....	81, 181
Haigh v. R. Mail S.S. Co. ....	539
Hales v. L. & N. W. Ry. Co. ....	72, 165, 186
Hall v. L. B. & S. C. Ry. Co. ....	213, 265, 286, 301, 303, 304
----- v. N. E. Ry. Co. ....	171, 540, 541
Hamilton & Calder v. Cal. Ry. Co. ....	267
Hamlin v. G. N. Ry. Co. ....	501, 502
Hammons, Foster and Others v. G. W. Ry. Co. and Others ....	345
Hammersmith & City Ry. Co. v. Brand .....	552
Handon v. Cal. Ry. Co. ....	466
Hanson v. Armitage .....	93
Harris v. Cokermonth, &c. Ry. Co. ....	406
----- v. G. W. Ry. Co. ....	65, 464, 466, 490
----- v. N. B. Ry. Co. ....	511
----- v. Packwood .....	24, 84
----- v. Perry .....	1, 3
Harrison v. L. B. & S. C. Ry. Co. ....	420, 422
Harrison and Camm v. Mid. Ry. Co. ....	281, 337
Harrisons & Crossfield, Ltd. v. L. & N. W. Ry. Co. ....	29, 44, 77, 83
Hart v. Baxendale .....	51, 55
----- v. Bush .....	93
Hawcroft v. G. N. Ry. Co. ....	487
Hawes & Son v. S. E. Ry. Co. ....	185
Hawkes v. Smith .....	45
Hawkins v. Edwards .....	585
Haynes v. G. W. Ry. Co. ....	155
Hearn v. L. & S. W. Ry. Co. ....	54
Hearne v. Garton .....	114
Hellaby v. Weaver .....	21
Henderson v. L. & N. W. Ry. Co. ....	51
----- v. Stevenson .....	65, 463, 465, 490
Hendrie v. Cal. Ry. Co. ....	547
Hetherington v. N. E. Ry. Co. ....	539
Heugh v. L. & N. W. Ry. Co. ....	76, 80, 197
Hibernian, The .....	85
Hickleton & Co., Ltd. v. Hull, Barnsley, &c. Ry. Co. ....	403, 404
Higgins v. Brotherton .....	82
Highland Ry. Co. v. G. N. of Scotland Ry. Co. ....	342
Hill v. Scot .....	19, 83
Hinton v. Dibbin .....	61, 65
Hirschel and Meyer v. G. E. Ry. Co. ....	57, 78
Hoare v. G. W. Ry. Co. ....	76, 155
Hobbs v. L. & S. W. Ry. Co. ....	501, 502, 573

# TABLE OF CASES.

XXI

<b>Hodgman v. W. Mid. Ry. Co.</b> ....	423
<b>Hodkinson v. L. &amp; N. W. Ry. Co.</b> .....	451, 462
<b>Hogan v. S. E. Ry. Co.</b> .....	566
<b>Holbrooks, Ltd. v. L. &amp; N. W. Ry. Co.</b> .....	274
<b>Holland v. Festiniog Ry. Co.</b> ....	404
<b>Holmes v. N. E. Ry. Co.</b> .....	188, 192, 551
<b>Holwell Iron Co. v. Mid. Ry. Co.</b> .....	378, 396, 401, 405
<b>Hood v. Anchor Line, Ltd.</b> .....	491
<b>Hooper v. Furness Ry. Co.</b> .....	490, 542
<b>— v. L. &amp; N. W. Ry. Co.</b> .....	170, 176, 458, 459
<b>Horne v. Mid. Ry. Co.</b> ....	81, 181, 182
<b>Hosier v. Cal. Ry. Co.</b> .....	398, 414
<b>Hudson v. Buxendale</b> .....	79, 193
<b>Hudston v. Mid. Ry. Co.</b> ....	439, 441
<b>Huffman v. N. Staff. Ry. Co.</b> .....	509
<b>Hull, Barnsley, &amp; Co. Ry. Co. v. Y. &amp; Der. Coal Co.</b> .....	368, 370
<b>Hunt v. Green</b> .....	518
<b>Huntingdon v. L. &amp; Y. Ry. Co.</b> ..	285
<b>Hurst v. G. W. Ry. Co.</b> ....	492, 493
<b>Hutchins v. L. C. C.</b> .....	582
<b>Hyde v. Trent Nav. Co.</b> ....	28, 35, 75, 76, 77, 193

## I.

<b>Ida, The</b> .....	42
<b>Ilfracombe Public Conveyance Co. v. L. &amp; S. W. Ry. Co.</b> .....	326, 412
<b>Independent Newspapers, Ltd. v. G. N. Ry. Co. of Ireland.</b> .....	369, 370
<b>Indermaur v. James</b> .....	562
<b>India General Navigation, &amp; Co. v. Dekhari Tea Co.</b> .....	18
<b>Ingate v. Christie</b> ....	11, 12, 17
<b>Innes v. L. B. &amp; S. C. and L. &amp; S. W. Ry. Cos.</b> .....	357, 470
<b>Inverness Chamber of Commerce v. Highland Ry. Co.</b> .....	404
<b>Israel v. Clarke</b> .....	576
<b>Ivens v. G. W. Ry. Co.</b> .....	196

## J.

<b>Jackson v. Rogers</b> .....	23, 24
<b>— v. Tollett</b> .....	528
<b>James v. Griffin</b> .....	102
<b>James Bannatyne, Ltd. v. G. S. &amp; W. Ry. Co.</b> .....	410
<b>James and Others v. Taff Vale and G. W. Ry. Cos.</b> .....	339

## PAGE

<b>James Morrison v. Shaw, Savill Co., Ltd.</b> .....	43
<b>Jameson v. Mid. Ry. Co.</b> .....	186
<b>Jarman v. G. W. Ry. Co.</b> .....	434
<b>Jenkins v. G. C. Ry. Co.</b> .....	162
<b>— v. G. W. Ry. Co.</b> .....	545
<b>Jenkyns v. Southampton Steam Packet Co.</b> .....	27, 440, 451
<b>Jenner v. S. E. Ry. Co.</b> .....	550
<b>Jennings v. G. N. Ry. Co.</b> ....	513, 518
<b>Jescott v. L. &amp; Y. Ry. Co.</b> .....	363
<b>John Greenwood, Ltd. v. Cheeshire Lines Committ v.</b> .....	333
<b>John Wallis &amp; Sons v. G. N. Ry. Co. (Ireland)</b> .....	96, 410
<b>John Watson, Ltd. v. Cal. Ry. Co.</b> .....	279, 325, 338, 336
<b>Johnson v. G. S. &amp; W. Ry. Co.</b> ..	542
<b>— v. Mid. Ry. Co.</b> .....	14, 23, 108, 109
<b>Johnston v. G. W. Ry. Co.</b> .....	567
<b>Jones v. Bithell</b> .....	482
<b>— v. Eastern Counties Ry. Co.</b> ..	414
<b>— v. Festiniog Ry. Co.</b> .....	554
<b>— v. N. E. Ry. Co.</b> .....	265
<b>Joseph Bank, Ltd. v. G. E. Ry. Co.</b> .....	384
<b>Joseph Travers &amp; Co., Ltd. v. Cooper</b> .....	18, 70, 71
<b>Joseph Watson, Ltd. v. Mid. Ry. Co.</b> .....	408
<b>Joshua Buckton &amp; Co. v. L. &amp; N. W. Ry. Co.</b> .....	140, 156

## K.

<b>Keddie, Gordon &amp; Co. v. N. B. Ry. Co.</b> .....	185
<b>Keen v. Henry</b> .....	588
<b>Kelly v. Met. Ry. Co.</b> .....	535
<b>Keup v. Elisha</b> .....	589
<b>— v. Falk</b> .....	102, 104
<b>— v. Ismay</b> .....	101
<b>— v. Ladbuck</b> .....	587
<b>Kempson v. G. W. Ry. Co.</b> .....	257
<b>Kendall v. L. &amp; S. W. Ry. Co.</b> ..	427
<b>— v. Marshall, Stevens &amp; Co.</b> ..	94, 102
<b>Kennedy v. G. &amp; S. W. Ry. Co.</b> ..	331
<b>Kent v. Mid. Ry. Co.</b> ....	170, 457, 458
<b>King v. London Improved Cab Co., Ltd.</b> .....	574
<b>Kippins, Ex parte</b> .....	592
<b>Kirby v. G. W. Ry. Co.</b> ....	148, 422
<b>Kirkinan v. Shawcross</b> .....	67
<b>Kirkstall Brewery Co. v. Furness Ry. Co.</b> .....	60
<b>Knights v. L. C. &amp; D. Ry. Co.</b> ...	509
<b>Knox v. G. N. Ry. Co. of Ireland</b> ..	154

	PAGE
<b>Lambert v. Robinson</b> .....	86
<b>Lancashire Brick and Terra Cotta Co. v. L. &amp; Y. Ry. Co.</b> .....	332
<b>Lancashire and Cheshire Coal Assoc. v. L. &amp; N. W. and L. &amp; Y. Ry. Cos.</b> .....	282
<b>Lancashire Patent Fuel Co. v. L. &amp; N. W. Ry. Co.</b> .....	377
<b>L. &amp; Y. Ry. Co. v. Gidlow</b> .....	254
_____ <b>v. Greenwood</b> ..	393, 394
_____ <b>v. Hull &amp; Barns-</b> <b>ley Ry. Co.</b> ..	355, 358, 364
_____ <b>v. Swann</b> ...	193, 295
_____ <b>and Others v.</b> <b>MacNicol</b> ..	80
<b>Lane v. Cotton</b> .....	30
<b>Langdon v. Howells</b> .....	509
<b>Lawton v. G. W. Ry. Co.</b> ...	439, 524
<b>Leach v. S. E. Ry. Co.</b> .....	449
<b>Leaver v. Pontypridd U. C.</b> .....	578
<b>Le Blanche v. L. &amp; N. W. Ry. Co.</b> .....	181, 495, 498, 501
<b>Le Conteur v. L. &amp; S. W. Ry. Co.</b> .....	34, 52, 436, 455
<b>Leek v. Maestor</b> .....	46
<b>Leek U. D. C. v. N. Staff. Ry. Co.</b> .....	322
<b>Lees v. L. &amp; Y. Ry. Co.</b> .....	375
<b>Lever Bros. v. Mid. Ry. Co.</b> .....	316, 377, 378
<b>Lewis v. G. W. Ry. Co.</b> .....	142, 143, 144, 149, 150, 159
_____ <b>v. L. C. &amp; D. Ry. Co.</b> .....	561
<b>Lilley v. Doubleday</b> .....	68
<b>Lilly v. Tilling</b> .....	576
<b>Limpus v. L. G. O. Co.</b> .....	574
<b>Lister v. L. &amp; Y. Ry. Co.</b> .....	42, 428
<b>Littleton Collieries, Ltd. v. L. &amp; N. W. Ry. Co.</b> .....	214, 289
<b>Liver Alkali Co. v. Johnson</b> ...	7, 8, 17, 18, 19, 20
<b>Liverpool Corn Traders' Assoc. v. G. W. Ry. Co.</b> .....	379, 380
<b>Liverpool Corn Traders' Assoc. v. L. &amp; N. W. Ry. Co.</b> .....	407
<b>Lloyd v. Lim. &amp; Waterford Ry. Co.</b> .....	149
_____ <b>v. Northampton &amp; Banbury Ry. Co.</b> .....	388
<b>Lockyer v. International Sleeping Car Co.</b> .....	492, 494
<b>Logan v. Highland Ry. Co.</b> .....	173
<b>London Reform Union and G. E. Ry. Co., In re</b> .....	479
<b>London Reform Union and G. N. &amp; N. L. Ry. Cos., In re</b> ...	479, 480
<b>L. C. C. v. G. E. Ry. Co.</b> .....	479, 480, 555

	PAGE
L. & S. W. Ry. Co. v. James .....	163, 537
_____ v. Staines Ry. Co. ....	325
L. & N. W. Ry. Co. v. Bartlett ...	101, 189, 191
_____ v. Crooke ...	295
_____ v. Donellan ..	293
_____ v. Duerden ..	284
_____ v. Evershed ..	367, 368, 371, 399
_____ v. Glyn .....57, 88	
_____ v. Hincheliffe	521
_____ v. Hughes ...	90
_____ v. J. P. Ash- ton & Co. .....	54, 455
_____ v. Jones..294, 293	
_____ v. Neilson..43, 68, 69, 167	
_____ v. Price .....	292
_____ v. Richard Hudson & Sons, Ltd. 30, 31, 165, 166	
_____ v. Rickerby, Ltd. ....	127
_____ v. S. E. Ry. Co. ....	375
_____ & G. W. Jt. Ry. Cos. v. Billington	299
L. M. & S. Ry. Co. v. Ince Wagon Co. ....	337
London, Tilbury and Southend Ry. Co. v. Paterson .....	532
Londonderry Port Commrs. v. G. N. of I. Ry. Co. and Others.	341, 391
Lord v. Mid. Ry. Co. .4, 143, 146,	180
Lovell v. L. C. & Dover Ry. Co.	448
Lovett v. Hobbs .....	436
Lowe v. G. N. Ry. Co. ....	510
Lowery v. Walker .....	545
Lygo v. Newbold .....	3
Lyles v. Southend-on-Sea Corpora- tion .....	536, 554
Lyon v. Mells .....	148
Lyons v. Cal. Ry. Co. ....	466

**M.**

<b>Macfarlane v. N. B. Ry. Co.</b>	
(No. 2) .....	376
<b>Machen v. L. &amp; Y. Ry. Co.</b> .....	556
<b>Machu v. L. &amp; S. W. Ry. Co.</b> ...	28,
	60, 171
<b>MacKenzie v. Cox</b> .....	9
<b>MacKlin v. Waterhouse</b> .....	27

# TABLE OF CASES.

xxiii

	PAGE
Macleod v. Edinburgh & District Tramways Co. ....	578
Macrow v. G. W. Ry. Co. ....	436, 438, 439, 443, 452
M'Callum v. N. B. Ry. Co. ....	558
M'Canes v. L. & N. W. Ry. Co. ....	82, 64, 128, 149, 422
McCartan v. N. E. Ry. ....	407, 499
McCawley v. Furness Ry. Co. ....	531, 540
McCormick v. Cal. Ry. Co. ....	566
McDonald v. Brown ....	583
McDowall v. G. W. Ry. Co. ....	546, 549, 558
McKean v. Melvor ....	76
McManus v. L. & Y. Ry. Co. ....	144, 147, 166, 430
McNally v. L. & Y. Ry. Co. ....	152
McQuoon v. G. W. Ry. Co. ....	60
Mahony v. Waterford, &c. Ry. Co. ....	170, 173, 457
Maldstone Town Council v. S. E. and L. C. & D. Ry. Cos. ....	340
Mallet v. G. E. Ry. Co. ....	167
Manchester Fed. of Coal Traders v. L. & Y. Ry. Co. ....	77, 194, 293, 297
Manchester, Port of, Warehouses, Ltd. v. Cheshire Lines Committee ....	210, 243, 376, 382
Manchester Ship Canal Co. v. Mid. Ry. Co. ....	354
Manchester Ship Canal Co. v. L. & N. W. Ry. Co. ....	352, 364
M. S. & L. Ry. Co. v. Brown. ....	70, 141, 143, 149
----- v. Denaby, &c. Co. ....	393, 394
----- v. Pickcock ....	287, 304
Mansion House Assoc. v. L. & N. W. Ry. Co. ....	246, 247
Mansion House Assoc. v. L. & S. W. Ry. Co. ....	383
Manufacturing Confectioners' Alliance v. Cal. Ry. Co. ....	251
Marriott v. L. & S. W. Ry. Co. ..	412
----- v. Yeoward ....	65
Marshall v. York. New. & Ber. Ry. Co. ....	445
Martin v. Dublin United Tramways Co. ....	574
----- v. G. E. Ry. Co. ....	553
----- v. Gt. Indian Pen. Ry. ..	437
Mathieson v. Cal. Ry. Co. ....	558
Maving v. Todd ....	22
Mayhew v. Nelson ....	50
Menzies v. Cal. Ry. Co. ....	198, 199, 256, 411
Mercer v. S. E. & C. Ry. Co. ....	551

	PAGE
Met. Dist. Ry. v. Met. Ry. Co. ..	354
Met. Ry. Co., <i>In re</i> ....	479
----- v. Delaney ....	555
----- v. Jackson ....	487, 488, 556
Metsenburg v. Highland Ry. Co. ....	193
Meux v. G. E. Ry. Co. ....	445, 535
Mid. Ry. Co. v. Black ....	296
----- v. Bromley ....	459, 460
----- v. Brotherton ..	114, 123
----- v. Loseby & Carnley ....	298
----- v. Myers, Rose & Co., Ltd. ....	232, 284, 291, 295, 296, 298
----- v. Stones Bros. ....	297
Millen v. Bransch ....	54, 63
Millom, &c. Iron Co., Ltd. v. Furness and other Ry. Cos. ....	389
Mitchell v. Cal. Ry. Co. ....	548, 550
----- v. L. & Y. Ry. Co. ....	78, 194, 195
Mold & Denbigh Ry. Co. v. L. & N. W. Ry. Co. ....	365
Moore v. G. N. Ry. Co. ....	149, 152
Morison, Pollexfen & Blair v. Walton ....	71
Morritt v. N. E. Ry. Co. ....	62
Morse v. Slue ....	18, 26, 41, 44, 46
Mottingham v. Eastern Counties Ry. ....	513
Mossell Bros. v. L. & N. W. Ry. Co. ....	127
Mulliner v. Florence ....	89
Munn v. Baker ....	67
Muntz's Metal Co. v. L. & N. W. Ry. Co. ....	290, 399
Munster v. S. E. Ry. Co. ....	30, 113, 436, 447
Murphy v. M. G. W. Ry. Co. ....	96, 144, 148
Murray v. G. & S. W. Ry. Co. ....	394
Muschamp v. L. & P. Ry. Co. ....	28, 73, 169, 171
Myers v. L. & S. W. Ry. Co. ....	72, 165
Mytton v. Mid. Ry. Co. ....	440

## N.

National Telephone v. Postmaster-General ....	317
Nelson v. Macintosh ....	3, 4
Neston Colliery Co. v. L. & N. W. Ry. Co. and G. W. Ry. Co. ....	192
Nevin v. G. S. & W. Ry. Co. ....	154, 422, 430
Newberry v. Bristol Tramways & Carriage Co. ....	576
New Orleans Ry. v. Burke ....	267, 533



	PAGE
Newry Nav. Co. v. G. N. Ry. Co. of Ireland .....	341
Nicholls v. N. E. Ry. Co. ....	112
Nichols v. Marsland .....	39
Nicholson and Another v. G. W. Ry. Co. ....	403
Nimmo v. Lanarkshire Tramways Co. ....	581, 583
Nitro-Phosphate Manure Co. v. L. & S. K. Docks Co. ....	40
Nitshill, &c. Co. v. Cal. Ry. Co. ....	377, 403
Noble v. Killick .....	509
N. B. Ry. Co. v. Clyde Shipping Co. ....	295, 306
----- v. Coltness Iron Co. ....	293, 295, 296
----- v. Lord Advocate. ....	313
----- v. Steel Co. of Scotland .....	294
N. E. Ry. Co. v. N. B. Ry. Co. .	316
----- v. Reckitt & Sons. ....	114
----- v. Wanless .....	546
Norman v. G. W. Ry. Co. ....	129, 192, 551
----- v. Phillips .....	94
Norris v. G. Central Ry. Co. ....	157
North Brit. Ins. Co. v. L. & Globe Ins. Co. ....	197
North Central Wagon Co. v. M. S. & L. Ry. Co. ....	205
North Lonsdale Iron & Steel Co., Ltd. v. Furness Ry. Co. ....	389
North Monkland Ry. Co. v. N. B. Ry. Co. ....	356
N. Staff. Colliery Owners' Assoc. v. N. S. and other Ry. Cos. ....	247
N. Staff. Ry. Co. v. Edge .....	370
----- v. Salt Union. Ltd. ....	277, 298
Notara v. Henderson .....	46, 47, 85
Notting Hill, The .....	185
Nugent v. Smith .....	11, 17, 18, 19, 38, 39, 42, 429
Nunan v. Southern Ry. Co. ....	539
O.	
Oakley v. Portsmouth, &c. Steam Packet Co. ....	39
O'Hanlan v. G. W. Ry. Co. ....	183
O'Keefe v. G. W. Ry. Co. ....	144
Olympia Oil Co. v. N. E. Ry. Co. ....	377
Oppenheim v. Russell .....	87, 102
Orient Co., The v. Brekke and Howlid .....	95
Ormiston v. G. W. Ry. Co. ....	129

	PAGE
Osborne v. L. & N. W. Ry. Co. ..	560, 564
Owen v. Burnett .....	50, 53
----- v. G. W. Ry. Co. ....	561, 562
Oxlade v. N. E. Ry. Co. ....	14, 109, 270, 402

## P.

Painter v. L. B. & S. C. Ry. Co. ....	326, 412
Palmer v. Grand Junction Ry. Co. .	14
----- v. L. & S. W. Ry. Co. ...	410, 412
Pardington v. S. Wales Ry. Co. ...	144
Parker v. G. W. Ry. Co. ....	178
----- v. L. C. Co. ....	554
----- v. S. E. Ry. Co. ....	463, 464, 490
Parkinson v. Garstang and Knott End Ry. Co. ....	550
----- v. G. W. Ry. Co. ....	199, 200, 201
Patscheider v. G. W. Ry. Co. ....	77, 452, 462
Paxton v. N. B. Ry. Co. ....	428
Peck v. N. Staff. Ry. Co. ....	65, 66, 139, 140, 141, 142, 144, 147, 148
Pelsall Co. v. L. & N. W. Ry. Co. (No. 1) .....	266
Perry v. Corporation of Glasgow. ....	582
Perkins v. L. & N. W. Ry. Co. ...	269
Perth General Station Committee v. Ross .....	324, 413, 469, 486
Phelps v. L. & N. W. Ry. Co. ...	440
----- v. Comber .....	104
Phesse v. Fisher .....	581
Phillips v. Clark .....	40, 168
----- v. Edwards .....	67
----- v. L. & S. W. Ry. Co. ...	567, 568
Pickering v. Barkley .....	41
----- v. Belfast Corporation. ....	574
Pickering Phipps v. L. & N. W. Ry. Co. ....	371, 373, 379, 380, 393, 398, 399, 400, 407
Pickford v. Cal. Ry. Co. ....	200
----- v. Grand June. Ry. Co. 14, 24, 30, 84, 128, 130	
----- v. L. & N. W. Ry. Co. ...	203, 287, 267, 316, 408
Pidcock (No. 1) v. M. S. & L. Ry. Co. ....	267, 285, 290, 291
Piddington v. S. E. Ry. Co. ....	368
Pirie v. Cal. Ry. Co. ....	558
Platt v. Hibbard .....	35
Plymouth Incorporated Chamber of Commerce v. G. W. and L. & S. W. Ry. Cos. ....	391
Polwarth (Lord) v. N. B. Ry. Co. ....	423

# TABLE OF CASES.

XXV

	PAGE
Pontifex v. Hartley .....	131
Port of London Authority v. G. E. Ry. Co. ....	291
Port of London Authority v. Mid. Ry. Co. ....	257, 335
Portway v. Colne Valley Ry. Co. ....	288, 289, 333
— v. Colne Valley & Halstead Ry. Co. ....	333
Postmaster-General v. Highland Ry. Co. ....	308
Poulton v. L. & S. W. Ry. Co. ..	129
Pounder v. N. E. Ry. Co. ....	532, 533
Powell Duffryn Co. v. Taff Vale Ry. Co. ....	213
Powles v. Hider .....	574
Pozzi v. Shipton .....	24, 485
— v. Smith .....	45
Pratt v. S. E. Ry. Co. ....	467
Priece v. Union Lighterage Co. ....	69
Pryce v. Monmouthshire Ry. Co. ....	178

## R.

R. v. Chapman .....	310
— v. Farnborough U. D. C., <i>Ex parte</i> Aldershot District Traction Co. ....	587
— v. Fletcher, <i>Ex parte</i> Ansonia ..	585
— v. Frere .....	189
— v. G. W. Ry. Co. ....	320
— v. Ivens .....	24
— v. L. & N. W. and G. W. Ry. Cos. ....	311
— v. Marylebone County Court Judge .....	275
— v. Metropolitan Police Commissioner, <i>Ex parte</i> Holloway .....	589
— v. Metropolitan Police Commissioner, <i>Ex parte</i> Pearce ..	589
— v. Metropolitan Police Commissioner, <i>Ex parte</i> Randall .....	589
— v. Villensky .....	44
— v. Wood .....	513
— v. York & N. Mid. Ry. Co. ....	320
Radley v. L. & N. W. Ry. Co. ....	558
Raiff v. Mitchell .....	88
Ralston v. Cal. Ry. Co. ....	429
Ransome v. Eastern Counties Ry. Co. ....	388, 403, 406
Read, Holliday, Ltd. v. Mid. & N. E. Ry. Co. ....	414
Reader v. S. E. & C. and L. & N. W. Ry. Cos. ....	146, 169, 175
Readhead v. Mid. Ry. Co. ....	9, 13, 166, 528, 573, 575
Redmayne v. G. W. Ry. Co. ....	186
Reynolds v. Beasley .....	509

## M.—C.

	PAGE
Rhymney Iron Co. v. Rhymney Ry. Co. ....	393, 395, 404
Rico v. Baxendale .....	181
Rich v. Kneeland .....	17
Richard v. G. W. Ry. Co. ....	332
Richards v. L. B. & S. C. Ry. Co. ....	436, 439, 446, 447, 462
Richardson v. Goas .....	102
— v. G. E. Ry. Co. ....	166, 530
— v. Mid. Ry. Co. ....	414
— v. N. E. Ry. Co. ....	31, 45, 417
— v. Rowntree .....	464, 490
Rickett, Smith & Co. v. Mid. Ry. Co. ....	46, 516
Riggall v. Gt. Central Ry. Co. ....	162
Riley v. Horne .....	23, 27, 38, 187
Rimell v. G. W. Ry. Co. ....	60
Rishton Local Board v. L. & Y. Ry. Co. ....	328
Rishworth v. N. E. Ry. Co. ....	407
River Wear Commissioners v. Adamson .....	39
Roberts v. G. W. Ry. Co. ....	432
— v. Mid. Ry. Co. ....	181
Robertson v. M. G. W. Ry. Co. ....	265, 411
Robinson v. Dunmore .....	10, 43, 578
— v. L. & S. W. Ry. Co. ....	422
Robson v. N. E. Ry. Co. ....	556, 561
Roche v. Cork, &c. Ry. Co. ....	467
Roe v. Birkenhead, Lanc. and C. June, Ry. Co. ....	130
Roman v. Mid. Ry. Co. ....	152
Rooke v. Mid. Ry. Co. ....	188
Rooth v. N. E. Ry. Co. ....	128, 129, 144, 147, 149, 482
Rose v. N. E. Ry. Co. ....	562
Rosenthal v. London County Council .....	6, 15, 65, 583
Roskell v. Waterhouse .....	35
Ross v. Hill .....	9, 10, 21, 578
Rothschild and Others v. Grand June, Canal Co. ....	323
Rowe v. Pickford .....	78
Royal Trust Co. v. Canadian Pacific Ry. Co. ....	540
Rumsey v. N. E. Ry. Co. ....	437, 444
Rushforth v. Hadfield .....	86
Russell v. Niemann .....	40, 41
— v. L. & S. W. Ry. Co. ....	155

## S.

Sales v. Lake .....	590
Salt Union v. N. Staff. Ry. Co. ..	290
Saunders v. S. E. Ry. Co. ....	516
Savona, The .....	46

## C

	PAGE
<i>Scaife v. Farrant</i> .....	7, 22
<i>Sebotamans v. L. &amp; Y. Ry. Co.</i> ...	100
<i>Schulze v. G. E. Ry. Co.</i> .....	182, 187
<i>Scothorn v. S. Staff. Ry. Co.</i> ....	36,
73, 169, 189, 190, 191, 463	
<i>Scott v. G. N. of Scotland Ry.</i>	
Co. ....	489
<i>Scottish Central Ry. Co. v. Ferguson</i> .....	141
<i>Scottish N. E. Ry. Co. v. Anderson</i> .....	205
—— <i>N. E. Ry. Co. v. Matthews</i> .....	519
<i>Searle v. Laverick</i> .....	8, 45
<i>Secretary of State for War v. Mid. G. W. Ry. Co.</i> .....	41
<i>Selway v. Holloway</i> .....	29
<i>Severn and Wye, &amp;c. Ry. Co. v. G. W. Ry. Co.</i> .....	352, 364
<i>Sharpe v. Grey</i> .....	484
<i>Shaw v. G. W. Ry. Co.</i> .....	28, 55, 56,
59, 60, 61, 69, 136, 137, 138, 139	
—— <i>v. York, &amp;c. Ry. Co.</i> .....	65
<i>Sheffield Coal Co., Ltd. v. L. &amp; N. W. Ry. Co. and Others</i> .....	395
<i>Sheffield District Ry. Co. v. G. C. Ry. Co.</i> .....	365
<i>Shepherd v. Brist. &amp; Ex. Ry. Co.</i> 171,	
196, 432	
—— <i>v. G. N. Ry. Co.</i> .....	439,
440, 442	
—— <i>v. Hack</i> .....	586
—— <i>v. Mid. Ry. Co.</i> .....	565
<i>Sheppard &amp; Son v. Mid. Ry. Co.</i> 156	
<i>Sheridan v. Mid. G. W. Ry. Co.</i>	
149, 154	
—— <i>v. New Quay Co.</i> .....	81
<i>Siffken v. Wray</i> .....	100
<i>Simkin v. L. &amp; N. W. Ry. Co.</i> ...	128
<i>Simons v. G. W. Ry. Co.</i> .....	112,
143, 146, 159	
<i>Simpson v. L. &amp; N. W. Ry. Co.</i> .	
182, 184	
<i>Sims v. Mid. Ry. Co.</i> .....	47, 74, 75,
80, 175	
<i>Simson v. L. G. O. Co.</i> .....	377
<i>Singer, &amp;c. Co. v. L. &amp; S. W. Ry. Co.</i> .....	203, 322, 464, 467
<i>Siordet v. Hall</i> .....	43
<i>Skolton v. L. &amp; N. W. Ry. Co.</i> ...	5
<i>Skinner v. L. B. &amp; S. C. Ry. Co.</i> 555	
—— <i>v. Upshaw</i> .....	86
<i>Skinningrove Iron Co. v. N. E. Ry. Co.</i> .....	375
<i>Skipwith v. G. W. Ry. Co.</i> .....	467
<i>Slim v. G. N. Ry. Co.</i> .....	429
<i>Smith v. Hudson</i> .....	94, 101
—— <i>v. London, &amp;c. Docks Co.</i> .	552
—— <i>v. Mid. Ry. Co.</i> .....	429
—— <i>v. Shepherd</i> .....	40
<i>Smith v. S. E. Ry. Co.</i> .....	546, 547
<i>Smith and Forrest v. L. &amp; N. W. Ry. Co.</i> .....	246
<i>Smith &amp; Sons, Ltd. v. L. &amp; N. W. Ry. Co.</i> .....	14, 110
<i>Smith, H. C., Ltd. v. G. W. Ry. Co.</i> .....	154, 155, 157
<i>Smith, Stone and Knight v. L. &amp; N. W. Ry. Co.</i> ...	316
—— <i>v. Mid. Ry. Co.</i> .....	267
<i>Smitton v. Orient, &amp;c. Co.</i> .....	10,
447, 448	
<i>Soanes v. L. &amp; S. W. Ry. Co.</i> ...	28,
29, 448	
<i>Solway June. Ry. Co. v. Cal. and G. &amp; S. W. Ry. Cos.</i> .....	341
<i>Somes v. British Empire Shipping Co.</i> .....	90
<i>S. E. Ry. Co. v. Ry. Commrs. and Corporation of Hastings</i> .....	319,
321, 470	
<i>Southcote's Case</i> .....	41
<i>Southsea, &amp;c. Steam Ferry Co. v. L. &amp; S. W. and L. B. &amp; S. C. Ry. Cos.</i> .....	386
<i>Sowerby v. G. N. Ry. Co.</i> ...	286, 303
<i>Spencer v. L. &amp; Y. Ry. Co.</i> .....	474
—— <i>v. Mid. Ry. Co.</i> .....	207
<i>Spillers and Bakers, Ltd. v. G. W. Ry. Co.</i> ..	213, 270, 279, 314, 325, 336
—— <i>v. Taff Vale Ry. Co.</i> .....	381, 397, 398
<i>Springer v. G. W. Ry. Co.</i> ....	47, 48,
80, 175	
<i>Stallard v. G. W. Ry. Co.</i> .....	468
<i>Stears v. Mid. Ry. Co.</i> .....	447
<i>Steinman v. Angier Line</i> .....	69, 168
<i>Stella, The</i> .....	161, 164, 457, 530,
541, 542	
<i>Stephens v. L. &amp; S. W. Ry. Co.</i>	
58, 60	
<i>Stephenson v. Hart</i> .....	80
<i>Stevens v. G. W. Ry. Co.</i> .....	155, 187
<i>Stewart v. L. &amp; N. W. Ry. Co.</i> ..	
437, 444	
—— <i>v. N. B. Ry. Co.</i> .....	192
—— <i>&amp; Co. v. Gordon</i> .....	124
<i>Stocksbridge Ry. Co. v. G. C. Ry. Co.</i> .....	353
<i>Stoessiger v. S. E. Ry. Co.</i> .....	49, 53
<i>Stone v. Mid. Ry. Co.</i> .....	232
<i>Storr v. Crowley</i> .....	75, 80
<i>Streeter v. Horlock</i> .....	36
<i>Strick v. Swansea Canal Co.</i> .....	403
<i>Stuart v. Crawley</i> .....	31
<i>Sturges v. G. W. Ry. Co.</i> .....	564
<i>Sutcliffe v. G. W. Ry. Co.</i> ....	15, 30,
45, 108, 111, 113, 137, 146	

# TABLE OF CASES.

xxvii

	PAGE
Sussex C. C. v. L. B. & S. C. and L. & S. W. Ry. Cos. ....	340, 341, 357
Syms v. Chaplin .....	58

	PAGE
United States Steel Products Co. v. G. W. Ry. Co. ....	87, 104, 204
Upshere v. Aldes .....	21

## T.

Taff Vale Ry. Co., <i>In re</i> .....	390
v. Giles ...	129, 194
v. Gordon Can- ning .....	550
Talley v. G. W. Ry. Co. ....	10, 43, 436, 437, 439, 446
Tal-y-llyn Ry. Co. v. Cambrian Ry. Co. ....	364
Taylor v. G. E. Ry. Co. ....	98
v. G. N. Ry. Co. ....	74, 75, 180
v. Gt. S. & W. Ry. Co. ..	562
v. Met. Ry. Co. ....	367, 370
v. M. S. & L. Ry. Co. ...	535, 536

Tharsis Sulphur and Copper Co. v. L. & N. W. Ry. Co. ....	323, 335
The Queen v. Saddlers' Co. ....	100
Thomas v. N. Staff. Ry. Co. ....	322, 325
v. Rhymney Ry. Co. ....	492, 529
Thomas Ward, Ltd. v. Mid. Ry. Co. ....	261, 814
Thompson v. L. & N. W. Ry. Co.	399
v. Mid. Ry. Co. ....	498
Thorogood v. Marsh .....	44
Timm v. Crawford .....	85
v. N. E. Ry. Co. and Others	385, 410

Titchburne v. White .....	26, 32
Toul v. N. B. Ry. Co. ....	532
Tobin v. L. & N. W. Ry. Co. ...	131, 181, 430
Tomlinson v. L. & N. W. Ry. Co.	266
Tough v. N. B. Ry. Co. ....	552
Town Commrs. of Newry v. G. N. Ry. Co. of I. ....	414
Trafford Park Co. v. Cheshire Lines Committee .....	353
Treadwin v. G. E. Ry. Co. ....	54
Trent Mining Co. v. Mid. Ry. Co.	196
Trent Nav. Co. v. Ward .....	45
Tusley v. Tate .....	510
Tuohy v. G. S. & W. Ry. Co. ...	170, 173
Turner v. L. & S. W. Ry. Co. ...	178
v. Trustees of Liverpool Docks .....	101

## U.

Uckfield Local Board v. L. B. & S. C. and S. E. Ry. Cos. ....	340, 358
United Machine Tool Co. v. G. W. Ry. Co. ....	157

## V.

Van Toll v. S. E. Ry. Co. ....	454, 463, 465
Vaughan v. Taff Vale Ry. Co. ...	553
Vaughton v. L. & N. W. Ry. Co.	60
Vennables v. Smith .....	574
Verschuere Creameries v. Hull & Netherlands Steamship Co. ....	73
Vickers, &c., Ltd. v. Mid. Ry. Co.	267, 288, 291, 333
Victoria Coal Co. v. Mid. and Noath & Brecon Ry. Cos. ....	340
Victoria Ry. Commrs. v. Coultas.	568

## W.

Wakelin v. L. & S. W. Ry. Co. ...	547
Walker v. G. N. of Ireland Ry. Co. ....	535
v. G. W. Ry. Co. ....	130
v. Jackson .....	26, 27, 55, 56, 81, 128
v. Mid. G. W. of Ireland Ry. Co. ....	418
v. S. E. Ry. Co. ....	515
v. York & N. Mid. Ry. Co. ....	65, 67
Wallace v. Gt. S. & W. Ry. Co. ...	111
v. Woodgate .....	89
Wallis v. L. & S. W. Ry. Co. ....	204
& Sons v. G. N. Ry. Co. (Ireland) .....	199, 201
Wannan v. Scottish Central Ry. Co. ....	200
Warwick & Birm. Canal Co. v. Birm. Canal Co. ....	353
Waterford, Limerick and Western Ry. Co. v. Postmaster-General.	309
Watkins v. Cottell ...	6, 7, 8, 11, 19, 22
v. G. W. Ry. Co. ....	551
v. Rymill .....	490
Watkinson v. Wrexham, &c. Ry. Co. (No. 1) .....	214, 333, 335
v. Wrexham, &c. Ry. Co. (No. 3) .....	265, 266, 324
Watson v. N. B. Ry. Co. ....	174
Watson, Todd & Co. v. Mid. Ry. Co. and L. & N. W. Ry. Co. ...	232
Way v. G. E. Ry. Co. ....	61
Wayde v. Carr .....	577

	PAGE		PAGE
Webb, <i>In re</i> .....	78, 194	Winkfield, The .....	82
Weir v. Howie .....	124	v. Packington .....	26
Welch v. L. & N. W. Ry. Co. ...	451	Wise v. G. W. Ry. Co. ....	433
Welfare v. L. & B. Ry. Co. ....	563	Wolf v. Summers .....	463, 578
Wentworth v. Outhwaite .....	101	Woodard v. Eastern Counties Ry. Co. ....	518
Western Electric Co. v. G. E. Ry. Co. ....	162	Woodgate v. G. W. Ry. Co. ....	490, 497, 499
Westfield v. G. W. Ry. Co. ....	204	Woodgor v. G. W. Ry. Co. ...	81, 186
West Ham Corp. v. G. E. Ry. Co. 322		Woodward v. L. & N. W. Ry. Co. ....	51
Whaite v. Lanc. & York Ry. Co. 53		Wren v. Eastern Counties Ry. Co.	180
Whalley v. Wray .....	9	Wright v. L. & N. W. Ry. Co. ..	188, 191
Whinney v. Moss Steamship Co. 87		v. Mid. Ry. Co. ....	529
White v. G. W. Ry. Co. ....	143	v. Snell .....	86, 88
v. Humphrey .....	77	Wyld v. Pickford .....	24, 25, 28, 50
Whitfield v. Despencer .....	20		
Whittaker v. L. C. C. ....	582		
Wilbraham v. Snow .....	82		
Wilby v. West Cornwall Ry. Co. 170			
Wilkinson v. L. & Y. Ry. Co. ...	158, 443, 444, 453, 454		
Williams v. G. W. Ry. Co. ....	439		
v. Mid. Ry. Co. ....	145, 148, 421		
Willingale v. Norris .....	591		
Wilson v. Anderton .....	100		
v. Brett .....	2, 3, 4		
v. Glasgow & S. W. Ry. Co. ....	546		
v. L. & Y. Ry. Co. ...	182, 184		
& Co. v. Scott .....	124		
Wiltshire Iron Co. v. G. W. Ry. Co. ....	86, 204		
Wimble v. Rosenberg .....	96		
Wing v. L. G. O. Co. ....	577		

## Y.

Yeats' Trustees v. G. & S. W. Ry. Co. ....	369
Yorkshire Woollen District Elec. Tram. Co. v. Ellis .....	585
Young v. Gwendraeth Valleys Ry. Co. ....	329

## Z.

Zunz v. S. E. Ry. Co. ....	28, 136, 157, 158, 457
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# THE LAW OF CARRIERS BY LAND.

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## PART I.

### CARRIAGE BY LAND GENERALLY.

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## CHAPTER I.

### CARRIERS WITHOUT HIRE.

1. A person who undertakes to carry goods or passengers gratuitously must use reasonable care in so doing. *Coggs v. Bernard*, 2 Lord Raymond Rep. 909; 1 Sm. L. C. 12th ed. 191; *Harris v. Perry & Co.*, [1903] 2 K. B. 219; 72 L. J. K. B. 725; *Bullen v. Swan Electric Engraving Co.*, 23 Times L. R. 258.

Chap. I.  
Art. I.

Lord Holt, in his judgment in *Coggs v. Bernard*, *supra*, deals with a gratuitous bailment to a carrier under the title of *mandatum*, and describes it as a "delivery of goods or chattels to somebody who is to carry them or do something about them gratis without any reward."

It has often been stated that a gratuitous carrier is answerable only for "gross negligence." Thus Story in his work on Bailments, 9th ed. at pp. 175—6, says: "The true rule of the common law would seem therefore to be that a mandatory who

Chap. I.  
Art. I.

acts gratuitously in a case where his situation or employment does not naturally or necessarily imply any particular knowledge or professional skill, is responsible only for bad faith or gross negligence."

It may be doubted whether this means more than that the degree of skill and care required from an amateur is less than that required from an expert. Indeed, it is possible that one reason why the somewhat loose expression "gross negligence" has been applied to the liability of the gratuitous carrier is that he usually is an amateur.

Another reason has been the tendency to put the liability of a mandatory bailee on the same level as that of a depository bailee. Story, at p. 143 of his above book, says: "The contract of mandate seems so nearly allied to that of deposit that it may properly be deemed to belong to the same class."

This view is opposed to the judgment of Lord Holt in *Coggs v. Bernard*. In discussing *depositum* he says (1 Sm. L. C. 12th ed. at p. 196): "Neither will a common neglect make him chargeable, but he must be guilty of some gross neglect . . . so that this sort of bailee is the least responsible for neglects," thereby indicating that a less degree of care was required in this class of bailment *depositum* than in that of the other classes, including *mandatum*.

On the other hand, Lord Holt, when dealing with *mandatum*, which includes a contract to carry gratuitously, says (Sm. L. C. 12th ed. at p. 204): "It is what we call in England an acting by commission. And if a man acts by commission for another gratis, and in the executing his commission behaves himself negligently, he is answerable. . . . This undertaking obliges the undertaker to a diligent management."

The rule that a mandatory bailee is bound to use such skill as he may reasonably be expected to possess, as laid down in *Wilson v. Brett*, 11 M. & W. 113; 12 L. J. Ex. 264, appears to negative the view that a bailee of this character is liable only for gross negligence. It is not easy to estimate a degree of negli-

gence which is relative as well as gross. It may also be noted that in *Wilson v. Brett* the argument on behalf of the unsuccessful defendant was that he was only liable on proof of gross negligence.

In *Nelson v. Macintosh*, 1 Stark. at p. 238, Lord Ellenborough said: "Where a person does not carry for hire he is bound to take proper and prudent care of that which is committed to him."

Sir William Jones in his treatise on Bailments (4th ed. at p. 61), when discussing *mandatum* says that "a bailment without reward to carry from place to place is very different from a mandate to perform a work, and there being nothing to take it out of the general rule, I cannot conceive that the bailee is responsible for less than gross neglect, unless there be a special acceptance." While it is true that in *Coggs v. Bernard* the defendant undertook to lift the casks safely and securely, Lord Holt does not base his judgment on this ground, and as stated by Story in his work on Bailments (9th ed. at p. 171), when considering the above statement of Sir Wm. Jones, "it is very difficult to perceive in common sense or in legal principle any ground upon which the distinction can be maintained."

The principle that a substantial degree of care is required from a gratuitous carrier was applied to the carriage of passengers in *Lygo v. Newbold*, 9 Ex. at p. 305, by Parke, B., and in *Harris v. Perry & Co.*, [1903] 2 K. B. at p. 226, by Collins, M. R., who said: "The principle in all cases of this kind (*i.e.*, of negligence on the part of a gratuitous carrier of a passenger) is that the care exercised must be reasonable. . . . There is an obvious difference between the measure of confidence reposed and responsibility accepted in the case of a person who merely receives permission to traverse the premises of another, and in the case where a person or his property is received into the custody of another for transportation."

The word "passenger" in the foregoing passage applies only to those persons who are being carried with the permission of the carrier or his authorised agent. A trespasser travels at his own



Chap. 1. risk, and the only duty which a gratuitous carrier owes to him  
Art. 1. is not wilfully to injure him. See *Grand Trunk Ry. Co. v. Barnett*, [1911] A. C. 361; 80 L. J. P. C. 117.

It therefore is submitted that it is misleading to describe a gratuitous carrier as being liable only for gross negligence, unless, as was stated by Willes, J., in *Lord v. Midland Ry. Co.*, L. R. 2 C. P. at p. 344; 36 L. J. C. P. 170: "Any negligence is gross in one who undertakes a duty and fails to perform it. The term 'gross negligence' is applied to the case of a gratuitous bailee, who is not liable unless he fails to exercise the degree of skill which he possesses." If this is the case, it would appear, as was stated by Lord Cranworth (then Rolfe, B.) in the above case of *Wilson v. Brett*, 11 M. & W. at p. 115, that gross negligence is the same thing as negligence with the addition of a vituperative epithet.

2. If goods in the charge of a gratuitous carrier are stolen, it is a question of fact whether he is liable by reason of the theft having been rendered possible by his neglect. See *Nelson v. Macintosh*, 1 Starkie, 238; *Giblin v. McMullen*, L. R. 2 P. C. 317; 38 L. J. P. C. 25.

In *Giblin v. McMullen*, *supra*, securities deposited with a bank were stolen. The bank received no payment for the grant of this facility and were held not to be liable. Lord Chelmsford, at p. 337 of the L. R. Report, said: "It is clear, according to the authorities, that the bank in this case were not bound to more than ordinary care of the deposit intrusted to them, and that the negligence, for which alone they could be made liable, would have been the want of that ordinary diligence which men of common prudence generally exercise about their own affairs."

In a recent Scottish case (*Copland v. Brogan*, [1916] Sess. Ca. 277) in which bank-notes intrusted to a gratuitous carrier were lost by him under circumstances suggesting that they might have

been stolen, it was held that the onus was on him to explain the loss, or at least to show that he had been reasonably careful. Chap. I.  
Art. 2.

3. The contract of a person who contracts to carry goods gratuitously is *nudum pactum*, and no action can be maintained against him for omitting to do so. *Coggs v. Bernard*, 1 Sm. L. C. 12th ed. at p. 205,

where Lord Holt said: "Indeed, if the agreement had been executory to carry these brandies from the one place to the other such a day, the defendant had not been bound to carry them."

In *Skelton v. L. & N. W. Ry. Co.*, L. R. 2 Q. B. at p. 636, Willes, J., said: "If a person undertakes to perform a voluntary act he is liable if he performs it improperly, but not if he neglects to perform it. Such is the result of the decision in the case of *Coggs v. Bernard*."

## CHAPTER II.

## PRIVATE CARRIERS FOR HIRE.

Chap. II.  
Art. 4.

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4. A private carrier of goods is one who does not come within the definition of a common carrier: that is to say, he is one (a) who undertakes to carry for reward on occasion, but not as a public employment, or (b) who, although inviting all and sundry to employ him as a carrier for reward, reserves the right to reject their offers of goods. *Belfast Ropework Co. v. Bushell*, [1918] 1 K. B. 210; 87 L. J. K. B. 740. See also *Electric Supply Stores v. Gaywood*, 100 L. T. 855; *Watkins v. Cottell*, [1916] 1 K. B. 10: 85 L. J. K. B. 287; *Rosenthal v. London County Council*, [1924] W. N. 165.

The question whether a man is a common carrier or a private carrier is one of fact.

In *Belfast Ropework Co. v. Bushell*, *supra*, a proprietor of motor lorries was sued in respect of the loss by fire of certain goods while being carried by him for reward. The fire was not due to his negligence. His usual practice was to accept any goods offered to him for carriage, but in some cases he had refused to carry when the offers did not suit him. Bailhache, J., said: "Did the defendant, while inviting all and sundry to employ him, reserve to himself the right of accepting or rejecting their offers of goods for carriage whether his lorries were full or empty, being guided in his decision by the attractiveness or otherwise of the particular offer, and not by his ability or inability to carry, having regard to his other engagements? Upon the facts as found by

me I answer that question in the affirmative, and in my opinion that answer shows that he is not a common carrier." Chap. II.  
Art. 4.

A person who, while carrying on business as a carrier of a certain class of goods, reserves the right to inspect them first, and then fixes a price for their conveyance, does not take upon himself the liability of a common carrier. *Watkins v. Cottell, supra.*

In *Scaife v. Farrant*, L. R. 10 Ex. 358; 44 L. J. Ex. 234, the defendant agreed to carry certain furniture, which had been previously inspected by his foreman, "undertaking risk of breakages (if any) not exceeding 5*l.* on any one article." The furniture was burnt during transit without any negligence on the part of the defendant. The Exchequer Chamber held that the liability of the defendant was wholly determined by the special contract, and therefore the question of his liability as a common carrier did not arise. It may be observed that in *Scaife v. Farrant*, as in *Watkins v. Cottell, supra*, the carrier first inspected the goods, and thereby presumably reserved the right to reject them, and thus came within the above definition of a private carrier.

A carrier who professes to carry for all persons does not become a private carrier, although he partly limits his liability by special contract, but, subject to the terms of such contract, retains the liability of a common carrier, unless the effect of such contract is to obliterate his character of common carrier. *Baxendale v. G. E. Ry. Co.*, L. R. 4 Q. B. at p. 255; 38 L. J. Q. B. 137; *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, [1922] 2 K. B. 742; 91 L. J. K. B. 807.

5. A carrier for reward by land is either a common or a private carrier as regards the liability which he incurs. There is no intermediate class. *Watkins v. Cottell*, [1916] 1 K. B. 10; 85 L. J. K. B. 287.

The decision of the Exchequer Chamber in *Liver Alkali Co. v. Johnson*, L. R. 9 Ex. 338; 43 L. J. Ex. 216, has given support

**Chap. II.**  
**Art. 5.**

to the view that there is an intermediate class of carrier, i.e., those who, while not common carriers, incur the liability of such. It is therefore material to observe that in the *Liver Alkali Co.'s Case* the carriage was by water, and the Court purposely confined themselves to the one question of the defendant's liability for the safety of the goods, as distinguished from his liability to be sued for refusing to carry (see p. 340, L. R. 9 Ex.), which latter point was not decided. This case, in short, is simply an illustration of the judgment of Lord Holt in *Coggs v. Bernard*, 1 Sm. L. C. 12th ed. at p. 203, that those who exercise a public employment of carrying goods are answerable for the same at all events.

As pointed out by Avory, J., in *Watkins v. Cottell*, ante, the original point for decision in the *Liver Alkali Case* was whether there was evidence to support the verdict that the defendant was a common carrier (see L. R. 7 Ex. 267), notwithstanding that his barge was employed exclusively by one person at a time, the Court below having held that this was not enough to deprive him of his character of a common carrier.

6. A private carrier of goods is liable for loss of or injury to the goods carried arising from his negligence. He is bound to exercise reasonable care in carrying the goods entrusted to him, but he is not liable to answer for them at all events. *Coggs v. Bernard*, 1 Sm. L. C. 12th ed. 191; *Brind v. Dale*, 8 Car. & P. 207; *Searle v. Laverick*, L. R. 9 Q. B. 122.

A private carrier comes within the second head of the class of bailment, which Lord Holt, in *Coggs v. Bernard*, deals with under the title "*Locatio operis faciendi*"; that is "a delivery to carry or otherwise manage for a reward," (a) to one that exercises a public employment, or (b) to a private person. With regard to the liability of the latter he says: "Though a bailee is to have

a reward for his management, yet he is only to do the best he can." Chap. II.  
Art. 8.

The liability of a carrier of passengers for reward in respect of injuries sustained by them while being carried by him is similar to that of a private carrier of goods, no matter whether he is carrying on a public employment or not. *Readhead v. Midland Ry. Co.*, L. R. 4 Q. B. 379; 38 L. J. Q. B. 169.

The occurrence of loss of or damage to the goods is evidence of want of care. *Mackenzie v. Cox*, 9 Car. & P. 632; *Ross v. Hill*, 2 C. B. 877.

If goods delivered to a bailee for reward are stolen without his default, it is his duty to use reasonable diligence in order to recover them, and if he fails to use such diligence he must prove, in order to discharge himself, that such diligence would have been unavailing. *Coldman v. Hill*, '1919 1 K. B. 443; 88 L. J. K. B. 491.

7. If the owner of goods in the hands of a private carrier should in any way conduce to their loss or damage, or keeps them under his own control, or if the loss is as likely to have arisen from the misconduct of the owner, or his want of care, as from that of the carrier, the latter is not responsible for the loss or damage. See *Whalley v. Wray*, 3 Esp. 74; *Brind v. Dale*, 8 Car. & P. 207.

In the latter case the plaintiff gave to the defendant, a private carrier for hire, certain goods to be taken care of and safely carried from one wharf to another. The plaintiff agreed to go with the cart which was to carry the goods, and to look after them, as the driver had explained that he could not watch both the horse and the goods. Upon the arrival of the cart at its destination, one of the parcels was missing, and the plaintiff, who had not followed the cart, brought an action for the loss of the package through the negligence of the defendant's servant.

**Chap. II.** Lord Abinger, C. B., in summing up, said: "I take it, that if a  
**Art. 7.** man agrees to carry goods for hire, although not a common carrier,  
. . . . he would not be liable . . . . if the owner accompanies  
the goods, to take care of them, and was himself guilty of negligence, for it is a rule of law that a party cannot recover, if his own negligence was as much the cause of the loss as that of the defendant." See also *Talley v. G. W. Ry. Co.*, L. R. 6 C. P. 44; and *Smitton v. Orient, &c. Co.*, 23 Times L. R. 359; 96 L. T. 848.

8. On the other hand, if the owner of goods deliver them to the carrier in such a way that they are in the entire control of the carrier, the latter will be liable for them, even though the owner may exercise a certain supervision over their transport. *Ross v. Hill*, 2 C. B. 877.

Where the plaintiff employed the defendant to carry goods, and the defendant said to the plaintiff at starting, "I will warrant the goods shall go safe," it was held that the defendant was liable for any damage sustained by the goods, notwithstanding the plaintiff sent one of his own servants along with the cart to look after them. *Robinson v. Dunmore*, 2 Bos. & Pul. 416.

## CHAPTER III.

## COMMON CARRIERS.

9. A common carrier is a person who undertakes Chap. III.  
Art. 9. for hire to transport, from a place within the realm to a place within or without the realm, all or certain kinds of goods for all persons who think fit to employ him.

To render such a person liable as a common carrier, he must exercise the business of carrying as a public employment, and must undertake to carry such goods for all persons indiscriminately, and hold himself out, either expressly or by course of conduct, as ready to engage in the transportation of such goods for hire as a business, and not merely as a casual occupation. *Coggs v. Bernard*, 1 Smith's L. C. 12th ed. 191; *Gisbourn v. Hurst*, 1 Salk. 249; *Ingate v. Christie*, 3 Car. & Kir. 61; *Ansell v. Waterhouse*, 2 Chit. Rep. 1; *Nugent v. Smith*, 1 C. P. D. 19, 423; 45 L. J. Ex. D. 697; *Watkins v. Cottell*, [1916] 1 K. B. 10; 85 L. J. K. B. 287; *Belfast Ropework Co. v. Bushell*, [1918] 1 K. B. 210; 87 L. J. K. B. 740.

In Scotland, the law as to common carriers is similar to that in England.

There is no substantial difference between a carrier within the realm and one who carries from a place in the realm to a place beyond it. *Benett v. P. & O. Co.*, 18 L. J. C. P. 85; *Crouch v. L. & N. W. Ry. Co.*, 14 C. B. 255; 23 L. J. C. P. 73.



**Chap. III.** "Everyone who undertakes to carry for anyone who asks him  
**Art. 9.** is a common carrier. The criterion is, whether he carries for particular persons only, or whether he carries for everyone. If a man holds himself out to do it for everyone who asks him, he is a common carrier; but if he does not do it for everyone, but carries for you or me only, that is a matter of special contract." Alderson, B., in *Ingate v. Christie*, 3 Car. & Kir. 61.

"A common carrier is so called as being a person who professes himself ready to carry goods for everybody. The liability of a person who makes a public profession of that sort is fixed by the custom of the realm as being that he is an insurer of those goods with certain limited exceptions," *per* Scrutton, L. J., in *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, [1922] 2 K. B. at p. 765; 91 L. J. K. B. 807.

It would appear that the early carriers have themselves to thank for the extensive liability imposed upon them by the common law, the reason for which was to prevent them acting in collusion with thieves. In *Coggs v. Bernard*, 1 Sm. L. C. 12th ed. 191, at p. 203. Lord Holt says: "The law charges this person thus entrusted to carry goods against all events but acts of God and of the enemies of the King, and this is a politic establishment contrived by the policy of the law for the safety of all persons, the necessity of whose affairs obliges them to trust these sorts of persons that they may be safe in the way of dealing; for else these carriers might have an opportunity of undoing all persons that had any dealings with them by combining with thieves, &c., and yet doing it in such a clandestine manner as would not be possible to be discovered."

In *Forward v. Pittard*, 1 T. R. 27, Lord Mansfield said: "The true reason is for fear that it may give room for collusion that the master may contrive to be robbed on purpose and share the spoil." The obligation of a common carrier is independent of contract. *Forward v. Pittard*, 1 T. R. 27. The original form of action against a common carrier was a declaration in tort for a breach of duty. See *Ansell v. Waterhouse*, 2 Chit. Rep. p. 1.

10. A person who is engaged in carrying passengers as a regular business and who holds himself out as ready to carry between places on a certain route all persons indifferently who accept his published terms is a common carrier so far as regards an obligation to carry all persons who offer themselves: Provided (a) that such persons are in a fit and proper state to be carried; (b) that they are willing to pay a reasonable fare; and (c) that the carrier can accommodate them. *Clarke v. West Ham Corporation*, [1909] 2 K. B. 858; 79 L. J. K. B. 56. Chap. III.  
Art. 10.

But such a carrier of passengers differs from a common carrier of goods in that he does not warrant the safety of his passengers or that his carriage is absolutely free from defect at all events. His duty is to take due care. *Aston v. Heaven*, 2 Esp. 533; *Christie v. Griggs*, 2 Camp. 79; *Readhead v. Midland Ry. Co.*, L. R. 4 Q. B. 379; 38 L. J. Q. B. 169.

In *Clarke v. West Ham Corporation*, *ante*, Farwell, L. J., said at [1909] 2 K. B. p. 877: "The carrier of passengers is free from liability as an insurer, not because he is not a common carrier, but because, although a common carrier, he is not a bailee of his passengers."

11. The principles set out in the two preceding articles apply to all carriers, whether statutory or otherwise.

#### (i) Railway companies

are authorised by the Railways Clauses Consolidation Acts, 1845 (sect. 86 in the English Act; sect. 79 in the Scottish Act), to carry and convey passengers and goods. They are not compelled

**Comp. III.** to carry as common carriers, but may act as such.' See *Palmer*  
**Art. 11** *v. Grand Junction Ry. Co.*, 4 M. & W. 749; *Johnson v. Midland*  
*Ry. Co.*, 4 Ex. 367; 18 L. J. Ex. 366; *Pickford v. Grand*  
*Junction Ry. Co.*, 10 M. & W. 399; *Dickson v. G. N. Ry.*  
*Co.*, 18 Q. B. D. 176; 56 L. J. Q. B. 111; *G. W. Ry. Co.*  
*v. Bunch*, 13 App. Cas. 31; 57 L. J. Q. B. 361.

Where, however, a railway company profess to be common carriers of any class of goods, the fact that they have made a special contract for the carriage of such goods, modifying their common law rights and liabilities, will not prevent them from being common carriers, unless such contract obliterates and destroys their character as common carriers. *Baxendale v. G. E. Ry. Co.*, L. R. 4 Q. B. 244; 38 L. J. Q. B. 137; *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, [1922] 2 K. B. 742; 91 L. J. K. B. 807.

The decision of Roche, J., in *W. R. Smith & Sons, Ltd. v. L. & N. W. Ry. Co.*, 88 L. J. K. B. 742; 35 T. L. R. 99, if and so far as it is to be taken as an authority for the proposition that railway companies are not common carriers in cases where they carry under a special contract must be regarded as having been overruled by the decision of the Court of Appeal in *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, *supra*.

Sect. 89 of the Railways Clauses Act, 1845 (sect. 82 of the Scottish Act), provided that railway companies shall have any protection or privilege which common carriers may be entitled to.

Sect. 2 of the Railway and Canal Traffic Act, 1854, requires a railway company to "afford all reasonable facilities for the receiving and forwarding and delivering of traffic," but as pointed out by Lindley, L. J., in *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. at p. 185, that Act "does not make railway companies liable as common carriers in respect of goods which they do not profess to carry as such." See also *Oxlade v. N. E. Ry. Co.*, 1 C. B.

(N. S.) at p. 498; *Sutcliffe v. G. W. Ry. Co.*, [1910] 1 K. B. 478; 79 L. J. K. B. 497. pass. III.  
Art. 11.

Railway companies are in general common carriers of passengers' luggage. See *G. W. Ry. Co. v. Bunch*, 13 App. Cas. 31; 57 L. J. Q. B. 361.

The position of railway companies is fully considered in Part II., *post*, p. 107.

## (ii) Proprietors of tramways.

Local authorities working tramways and tramway companies have power, subject to the provisions of their private Acts of Parliament, to carry on the business of common carriers, and to do all things ancillary to that business. *A.-G. v. Manchester Corporation*, [1906] 1 Ch. 643; 75 L. J. Ch. 330. Therefore, where a corporation were authorised by private Acts of Parliament to use their tramways "for the purpose of conveying and delivering animals, goods, minerals, or parcels," it was held that they might maintain stations and warehouses and employ vans and agents to collect and deliver goods and parcels which had been or were to be carried on their tramways, but could not carry on a general carrier's business in respect of goods not carried on the tramways. *Ibid.*

As to whether a carrier by tramway is a common carrier or not, the same rules will apply as in the case of other carriers. Therefore, where in a recent case the London County Council had an absolute discretion as to whether they would accept or refuse certain silk goods of an undeclared value of 90*l.*, and could make what charge they liked for their carriage, Bailhache, J., held that they were not common carriers, and were not protected by sect. 1 of the Carriers Act, 1830. He further held that the loss being due to the negligence of the Council's servant, they were liable for the same. *Rosenthal v. London County Council*, [1924] Weekly Notes, 165.

With respect to the carriage of passengers by tramway, a public authority or others working tramways are common carriers in

**Chap. III.** that they are bound to carry according to their profession. This  
**Art. II.** in effect means that they must carry all persons—other than objectionable persons—who offer themselves and who are willing to pay the published fare and for whom there is available accommodation, but not being bailees of their passengers, they are liable for negligence only, and not as insurers. *Clarke v. West Ham Corporation*, [1909] 2 K. B. 858; 79 L. J. K. B. 56.

The charging powers of tramway proprietors are generally limited by the Act or Provisional Order authorising the construction of the tramway. In that case the maximum statutory fare entitles the passenger to travel with the benefit of all the legal liabilities attaching to the carrier, and therefore where (1) a passenger is carried at less than the full statutory fare subject to a condition limiting the amount recoverable by him in case of his suffering injury through the carrier's negligence, and (2) no alternative is offered him of being carried at the full fare without any such limitation of the carrier's liability, this condition is illegal and cannot be enforced. See *Clarke v. West Ham Corporation*, *supra*.

With respect to the *proprietors of omnibuses*, it is conceived that their liability as to the reception and safety of passengers is similar to that of tramway proprietors, but that, except in cases where their charging powers are limited by statute, they may impose conditions limiting their liability without offering any alternative.

### (iii) Canal companies.

By an Act of 1845 (8 & 9 Vict. c. 42), canal companies are empowered to carry as common carriers, and by sect. 6 of the Act, nothing therein contained shall make any such company liable "than where according to the laws of this realm for the time being common carriers would be liable."

The canal companies, with a few exceptions, do not in practice act as carriers.

- (iv) Proprietors of barges and lighters and boatmen carrying goods for all persons indifferently for hire are common carriers. *Rich v. Kneeland*, Cro. Jac. 330; Hob. 17; *Coggs v. Bernard*, 1 Sm. L. C. 12th ed. 191; Bac. Ab. Carrier, A.; *Dale v. Hall*, 1 Wilson, 281; *Ingate v. Christie*, 3 Car. & Kir. 61; *Liver Alkali Co. v. Johnson*, L. R. 7 Ex. 267; 9 Ex. 338; 43 L. J. Ex. 216.

Chap. III.  
Art. 11.

In *Liver Alkali Co. v. Johnson*, *supra*, the defendant, who owned flats or barges on the Mersey, carried for anyone who chose to employ him under an express agreement as to each voyage. The goods of only one person were carried at a time. It was held that he had incurred the liability of a common carrier notwithstanding that he did not hold himself out as plying between any fixed places, or put up a flat like a general ship to go to some particular place and take all goods brought him for that voyage.

It may be observed, however, that this decision is very near the border line, as was pointed out by Cockburn, C. J., in his judgment in *Nugent v. Smith*, 1 C. P. D. at p. 433, where he says: "I cannot help seeing the difficulty which stands in the way of the ruling in this case, namely, that it is essential to the character of a common carrier that he is bound to carry the goods of all persons applying to him, while it never has been held, and, as it seems to me, could not be held, that a person who lets out vessels or vehicles to individual customers on their application was liable to an action for refusing the use of such vessel or vehicle if required to furnish it."

Hamilton, J., in *Consolidated Tea Co. v. Oliver's Wharf*, [1910] 2 K. B. at p. 399; 79 L. J. K. B. 810, thought that the gist of the decision in the *Liver Alkali Case* was "that if the defendants were exercising the public employment of carry-

Chap. III. ing goods by water, which was a question of fact, then there  
Art. 11. would be attached to that employment the same liability with regard to the safety of the goods as the law imposes on common carriers."

On the other hand, the Divisional Court (Avory and Rowlatt, JJ.) in *Watkins v. Cottell*, [1916] 1 K. B. 10; 85 L. J. K. B. 287, were of opinion that the effect of the judgment in the *Liver Alkali Case* was that the defendant was a common carrier, Avory, J., pointing out that the difficulty with regard to that case had arisen owing to insufficient attention having been given to the original judgment in the Court of Exchequer, where it was held that there was evidence that the defendant was a common carrier, and that "the only question was whether it made any difference that he did not ply between fixed termini, and did not carry more than one person's goods at a time, and it was held that it did not."

In *Joseph Travers & Sons, Ltd. v. Cooper*, [1915] 1 K. B. 73; 85 L. J. K. B. 1787, the Court of Appeal considered that a barge owner and lighterman incurred the liability of a common carrier.

By the Indian Carriers Act, 1865, "common carrier" is defined as "a person, other than the government, engaged in the business of transporting for hire property from place to place by land or inland navigation for all persons indiscriminately." In a recent case before the Privy Council (*The India General Navigation, &c. Co. v. Dekhari Tea Co.*, 93 L. J. P. C. 108), chests of tea had been delivered to a railway company for conveyance. The railway having broken down, the railway company arranged with the appellants, who owned flats and were common carriers by water, that the latter should convey the tea by a special flotilla to a point where it could be transferred to the railway. Part of the tea having been destroyed by fire while on one of the appellants' flats, it was held that although special flats had been assigned for this special voyage, the appellants were acting as common carriers, and were liable for the loss.

- (v) Owners and masters of vessels employed as <sup>Shap. III.</sup> Art. 11. general ships for the carriage of goods for all persons indifferently are common carriers. *Morse v. Slue*, 1 Vent. 190, 238; *Barclay v. Cuculla y Gana*, 3 Doug. 389; *Nugent v. Smith*, 1 C. P. D. 19, 423; 45 L. J. C. P. 697.

In *Liver Alkali Co. v. Johnson*, L. R. 9 Ex. 338; 43 L. J. Ex. 216, Brett, J., differing from the rest of the Court, was of the opinion that by a separate custom of England, "every shipowner who carries goods for hire in his ship, whether by inland navigation or coastways or abroad, undertakes to carry them at his own absolute risk, the act of God or of the Queen's enemies alone excepted," irrespective of whether he was a common carrier or not.

In *Nugent v. Smith*, 1 C. P. D. 19, 423; 45 L. J. C. P. 697, the same judge expressed a similar view, and supported it by founding the English law of bailment on the Roman law. Upon that case, however, coming before the Court of Appeal, that Court, and in particular Cockburn, C. J., refused to accept this extended view of the liability imposed by the common law on the owner of a private ship, and held that a shipowner, who was not a common carrier, did not incur the liability of such.

In *Hill v. Scott*, [1895] 2 Q. B. 371, 713; 64 L. J. Q. B. 635; 65 L. J. Q. B. 87, the plaintiff, a Bradford merchant, bought wool in London and handed a delivery order to the defendant, who carried the wool in his ship from London to Goole, and thence forwarded it by rail to Bradford, charging the plaintiff a through rate of £1:7s. 6d. per ton, which covered all expenses of the entire transit, including insurance. The insurance was effected by the defendant, who selected the underwriters and paid the premium, after receiving directions from the plaintiff as to the amount per bale for which he was to insure. There was no



Chap. III.  
Art. 11.

bill of lading. The wool having been damaged during the sea transit, Lord Russell of Killowen, C. J., following the decision in *Liver Alkali Co. v. Johnson*, ante, p. 17, held—That the defendant had insured the wool, not as agent for the plaintiff, but to cover his own liability as carrier, that he was exercising a public calling, and had undertaken a liability equal to that of a common carrier, and had not, either expressly or impliedly, stipulated for any limitation of his liability, and therefore was liable without proof of negligence. This decision was affirmed by the Court of Appeal.

## 12. The following are not common carriers:—

### (i) The Postmaster-General.

The *Postmaster-General* is not liable for packets and letters lost or stolen while in his custody, *Lane v. Cotton*, 1 Ld. Raymond, 646, in which case Lord Holt dissented from the three other judges who formed the Court along with him.

In *Whitfield v. Despencer*, 2 Cowp. at p. 764, Lord Mansfield said: "The Postmaster has no hire, enters into no contract, carries on no merchandise or commerce. But the Post Office is a branch of revenue and a branch of police created by Act of Parliament. . . . As a branch of police it puts the whole correspondence of the kingdom (for the exceptions are very trifling) under government, and entrusts the management and direction of it to the Crown and officers appointed by the Crown. There is no analogy therefore between the case of the Postmaster and a common carrier."

Sect. 13 of the Post Office Act, 1908, provides that "Registration of or giving a receipt for a postal packet, or the giving or obtaining of a certificate of posting or delivery of a postal packet, shall not render the Postmaster-General or the Post Office revenue in any manner liable for the loss of the packet or the contents thereof."

In practice, however, the Postmaster-General, as an act of grace,

is prepared to pay a limited amount of compensation in accordance with a published scale where registered or insured packets have been lost or damaged. See Post Office Guide. Chap. III.  
Art. 14.

In the case of parcels carried for the Postmaster-General by railway companies, "no company shall incur or be subject to any liability in respect of the conveyance or loss of or damage to any of the parcels." See Post Office (Parcels) Act, 1882, s. 7 (5).

(ii) Cabmen.

It is true that in *Upshare v. Aidee*, Comyn's Rep. 24, Lord Holt apparently held that a hackney coachman was liable as a common carrier for the loss of goods for which he received separate payment. On the other hand, in *Ross v. Hill*, 2 C. B. 877 (decided in 1846), the Court of Common Pleas held that an implied contract by such a coachman to carry safely and securely referred "to the degree of care which under the circumstances the law required of the defendant, that is, that he shall use such reasonable degree of care that the plaintiff shall incur no damage or loss through his (the defendant's) negligence or default." See judgment of Tindal, C. J., at p. 890 of the Report, from which, and also from the statement of the argument on p. 881, it would appear that the defendant was not sued as a common carrier.

(iii) Forwarding agents who collect goods for transmission by railway and receive payment for the through conveyance. *Hellaby v. Weaver*, 17 L. T. (O. S.) 271.

(iv) Wharfingers, who although they style themselves "carmen" do not undertake to carry the goods of everybody who asks them, nor hold themselves out as being ready to do so. *Chattock & Co. v. Bellamy & Co.*, 64 L. J. Q. B. 250; *Consolidated Tea, &c. Co. v. Oliver's Wharf*, [1910] 2 K. B. 395; 79 L. J. K. B. 810.

chap. III. In *Maving v. Todd*, 1 Stark. 72; 4 Camp. 225, Lord Ellen-  
Art. 18. borough in Starkie's Report is reported to have expressed the  
opinion that the liability of a wharfinger, while in possession of  
goods, is similar to that of a carrier. Hamilton, J., commenting  
on this in the *Consolidated Tea Co.'s Case*, *supra*, said: "That  
proposition would be indisputably bad law unless the fact  
was that the goods were only temporarily warehoused by the  
defendant in order that he might proceed to carry them, and that  
fact the reporter has omitted to record."

- (v) Transport contractors who stipulate that they  
shall first inspect the goods to be carried and  
then undertake to carry them in consideration  
of a payment fixed by themselves according  
to the circumstances of each case. *Scaife v.*  
*Farrant*, L. R. 10 Ex. 358; 44 L. J. Ex.  
234; *Watkins v. Cottell*, [1916] 1 K. B. 10;  
85 L. J. K. B. 287.

## CHAPTER IV.

### DELIVERY TO AND ACCEPTANCE BY THE CARRIER.

13. It is the duty of a common carrier to receive the goods of any person or to accept any passenger who offer to pay the proper charge or fare, unless the conveyance of the common carrier be full, or the goods are of such a kind as he is unable to carry or does not profess to carry or cannot carry without exceptional danger. *Riley v. Horne*, 5 Bing. 217, per Best, C. J., at p. 220; *Jackson v. Rogers*, 1 Show. 554; *Johnson v. Mid. Ry. Co.*, 4 Ex. 367; 18 L. J. Ex. 366; *Garton v. Bristol and Exeter Ry. Co.*, 1 B. & S. 112; 30 L. J. Q. B. 273; *Batson v. Donovan*, 4 B. & A. 21; *Clarke v. West Ham Corporation*, [1909] 2 K. B. 858; 79 L. J. K. B. 56.

Chap. IV.  
Art. 13.

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A common carrier may limit his business to the carriage of a particular class of goods. His obligation to carry arises only in respect of those goods which he professes to carry. *Johnson v. Midland Ry. Co.*, 4 Ex. 367; 18 L. J. Ex. 366; *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. 176; 56 L. J. Q. B. 111.

It has been held that a refusal to carry was reasonable when it appeared that it was a time of public commotion, and that the goods which the carrier was desired to carry were the object of public fury, and their carriage would impose upon the carrier a risk against which his means of protection would be inadequate to secure him. *Edwards v. Sherratt*, 1 East, 604.

If a common carrier refuses to carry goods offered to him, and has no sufficient excuse for such refusal, he may be indicted for

Art. 18. <sup>IV.</sup> his neglect of duty. See Patteson, J., in *Pizzi v. Shipton*, 1 P. & D. 12.

It is upon the same principle that innkeepers are by the common law bound to receive and entertain guests, and are indictable for their refusal so to do. 1 Hawk. P. C. p. 714, s. 2; *R. v. Ivens*, 7 Car. & P. 213.

14. A common carrier is entitled to be paid the amount of his hire before he accepts the goods for carriage, but the amount demanded must be reasonable; and if a person brings him goods for carriage and tenders him a reasonable amount of remuneration, the carrier may be sued if he refuses to accept such goods. *Jackson v. Rogers*, 1 Show. 554; *Pickford v. Grand Junction Ry. Co.*, 8 M. & W. 372; 10 L. J. Ex. 342; *Carr v. Lanc. & York. Ry. Co.*, 7 Ex. 707; 21 L. J. Ex. 261; see opinion of Blackburn, J., in *G. W. Ry. Co. v. Sutton*, L. R. 4 H. L. at p. 237; 38 L. J. Ex. 177.

"The carrier is entitled to have his reward paid to him before he takes the package into his custody." Per Best, J., in *Batson v. Donovan*, 4 B. & A. 21.

In *Pickford v. Grand Junction Ry. Co.*, *supra*, Parke, B., said: "The acts to be done by both parties, namely, the receipt of the goods and the payment of a reasonable sum for their carriage, being contemporaneous acts."

If payment of a reasonable sum is refused, the common carrier may avoid his common law duty and liability, and make terms for the carriage of the goods, exactly as a private carrier for hire may. *Wylde v. Pickford*, 8 M. & W. 443; 10 L. J. Ex. 382.

The sum demanded by the carrier must be reasonable. A carrier is entitled to make a higher charge for the greater risk attending the carriage of valuable goods, but the charge must be reasonable. *Harris v. Packwood*, 3 Taun. 264.

"The obligation which the common law imposed upon a person holding himself out as a common carrier of goods was to accept and carry all goods delivered to him for carriage according to his profession (unless he had some reasonable excuse for not doing so), on being paid a reasonable compensation for so doing. And if the carrier refused to accept such goods, an action lay against him for so refusing; and if the customer, in order to induce the carrier to perform his duty, paid under protest a larger sum than was reasonable, he might recover back the surplus beyond what the carrier was entitled to receive in an action for money had and received, as being money extorted from him." Per Blackburn, J., in *G. W. Ry. Co. v. Sutton*, L. R. 4 H. L. at p. 237; 38 L. J. Ex. 177. Chap. IV.  
Art. 14.

"If the plaintiff had meant to make the defendants liable as common carriers, the course for him to take was to refuse to enter into the special contract, and to tender them the price for the carriage of the goods, and on their refusal to carry to bring an action against them for not carrying." Per Parke, B., in *Carr v. Lanc. & York Ry. Co.*, 21 L. J. Ex. 261; 7 Ex. 707.

"I take it that the law with respect to the obligation entered into by persons holding themselves out to the world as common carriers is clear; namely, that it is their duty to carry for any person who tenders to them the proper charge, all goods which they have convenience for carrying, and in respect of which they hold themselves out as carriers, without subjecting that person to the liability of signing a note containing an unreasonable condition." Per Cockburn, C. J., in *Garlon v. Bristol & Ex. Ry. Co.*, 30 L. J. Q. B. 273 at p. 294; 1 B. & S. 112.

A common carrier is not bound to convey goods except on payment of the full price for the carriage, according to their value; and if that is not paid, it is competent for him to limit his liability by special contract. *Wylde v. Pickford*, 8 M. & W. 443; 10 L. J. Ex. 382.

A common carrier is bound by the representation made by his clerks or servants, and if the goods are sent upon the faith

Chap. IV. of such representation, the carrier cannot charge more than the  
Art. 14. sum named, although the clerk may have inadvertently fallen into a mistake. *Winkfield v. Packington*, 2 Car. & P. 600.

15. If the package delivered to the carrier does not contain goods which are within the provisions of the Carriers Act, 1830, there is no occasion to inform him, nor has he any absolute right in all cases to insist on being informed as to its contents or their value before he will accept it. *Titchburne v. White*, 1 Stra. 144; *Crouch v. L. & N. W. Ry. Co.*, 14 C. B. 255; 23 L. J. C. P. 73.

It may be reasonable, in some cases, that the carrier should have such information, and it is then his duty to make inquiry, as if he wishes to have a reward proportionate to their value, or to know whether they are goods of a kind for which he has a sufficiently secure conveyance. *Batson v. Donovan*, 4 B. & A. 21; *Morse v. Sluc*, 1 Vent. 190, 238; *Walker v. Jackson*, 10 M. & W. 161; 12 L. J. Ex. 165.

As to Dangerous Goods, see *post*, p. 32.

In *Riley v. Horne*, 5 Bing. 217, Chief Justice Best said: "If the owner of the goods will not tell the carrier what his goods are, and what they are worth, the carrier may refuse to take them." A dictum which cannot be supported, per Maule, J., in *Crouch v. L. & N. W. Ry. Co.*, *supra*. In that case, Chief Justice Jervis said: "No authority has been cited to show that a carrier is entitled in every case to know the nature and quality of the goods tendered to him to be carried; and on looking at the other provisions of the Act of Parliament there seems to be no reason why the company should make the inquiry. With reference to dangerous articles, they are entitled by the Act to know the nature and quality, and such must be discovered to them at the

time of the delivery; and if the company suspect articles to be of a dangerous nature, they may open the packages." Chap. IV.  
Art. 15.

In *Macklin v. Waterhouse*, 2 Moo. & P. 319, it was held that if the carrier did not ask the sender of the goods what the goods were, and what they were worth, or if, when he asked, and was not answered, he took charge of the goods, he waived the right to know their contents and value, and was answerable for their amount.

In *Walker v. Jackson*, *supra*, it was held that a party receiving a parcel to be carried ought to inquire as to its contents; and if nothing be done by the party delivering it to deceive him, or to give the transaction a false complexion, he is answerable for the parcel.

16. While delivery to the carrier or his agent is the usual way of making a contract (see *Buckman v. Levi*, 3 Camp. 414), it is not the only way, and an invitation by the carrier and the formation of a contract of carriage may be inferred from the facts of a particular case. *Jenkyns v. Southampton Steam Packet Co.*, [1919] 2 K. B. 135; 88 L. J. K. B. 965.

In the last mentioned case the plaintiff gave his luggage to a man not in the service of the defendants, who, with the concurrence of their servants, took it on to their steamer and placed it in the usual place for luggage. The luggage was lost during transit, and it was held by the Court of Appeal that there was evidence that the defendants had undertaken the liability of common carriers, and were therefore liable as such.

17. In the absence of a special contract to the contrary, the acceptance of goods by a carrier renders him responsible for them until they reach the final destination to which they are addressed or consigned although they are transferred during the transit to



Chap. IV.  
Art. 17.

another carrier. *Hyde v. Trent Nav. Co.*, 5 T. R. 389; *Muschamp v. Lancaster and Preston Ry. Co.*, 8 M. & W. 421; 10 L. J. Ex. 460; *Bristol and Exeter Ry. Co. v. Collins*, 7 H. L. Ca. 194; 29 L. J. Ex. 41. See *Machu v. L. & S. W. Ry. Co.*, 2 Ex. 415; 17 L. J. Ex. 271.

18. Save in cases coming within sect. 7 of the Railway and Canal Traffic Act, 1854 (see *post*, pp. 136 to 157), where the carrier delivers a ticket or other notice to the person from whom he receives the goods specifying the terms on which he agrees to carry, and the customer assents or does not dissent, the terms of the notice will establish a special agreement, and will exclude the common law contract so far as it is varied by those terms. *Wyld v. Pickford*, 8 M. & W. 443; 10 L. J. Ex. 382; *Gt. N. Ry. Co. v. Morville*, 21 L. J. Q. B. 319; *Carr v. Lanc. & York. Ry. Co.*, 7 Ex. 707; 21 L. J. Ex. 261; *Zunz v. S. E. Ry. Co.*, L. R. 4 Q. B. 539; 38 L. J. Q. B. 209; *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. 373.

At common law a common carrier could not impose unreasonable conditions (see *Garton v. Bristol & Exeter Ry. Co.*, 1 B. & S. 112, 162; 30 L. J. Q. B. 273), but his right to make special contracts was recognised by the Courts as stated in the above article, and was preserved by sect. 6 of the Carriers Act, 1830. See *post*, p. 59.

19. A delivery to a person who is *primâ facie* the authorised servant of the carrier is sufficient to make the latter liable. *Soanes v. L. & S. W. Ry. Co.*, 88 L. J. K. B. 524. If a carrier ratifies a wrongful possession of goods by his servant he will not be liable

in the absence of negligence for their loss unless his action involves the ratification of a contract of carriage. *Harrisons and Crossfield v. L. & N. W. Ry. Co.*, [1917] 2 K. B. 755; 86 L. J. K. B. 1461. Chap. IV.  
Art. 19.

In *Soanes v. L. & S. W. Ry. Co.*, *supra*, the plaintiff, intending to travel on the defendants' railway, gave his luggage to a porter in their uniform, who apparently was employed at that particular station. The porter, in fact, was employed at another station, and was off duty at the time. Part of the luggage having been lost while in charge of the porter, it was held that he had apparent authority to accept it on behalf of the railway company, and they were liable as common carriers.

In *Harrisons & Crossfields v. L. & N. W. Ry. Co.*, *supra*, a carman in the service of the railway company collected when off duty goods from the premises of the plaintiffs, and converted them to his own use. The company prosecuted him to conviction, laying the property in the goods in themselves. It was held by Rowlatt, J., that they were not liable as common carriers, as they had not ratified such possession under a contract of carriage.

In *Burrell v. North*, 2 Car. & K. 680, Erle, J., said: "If the defendant allow these persons to receive parcels, to be conveyed by him as a carrier, this is quite enough."

If a carrier directs that goods be left at a particular booking-office, he will be answerable for the negligence of the keeper of such office. *Colepepper v. Good*, 5 Car. & P. 380.

Where goods were left in the yard of an inn, at which the carrier and other carriers put up, but no actual delivery to the carrier or his servant was proved, it was deemed not such a delivery to the carrier as to charge him with the custody. *Selway v. Holloway*, 1 Ld. Raym. 46.

In cases within the Carriers Act, 1830, a delivery of a parcel at any office, warehouse, or receiving house used or appointed for the receiving of parcels, is sufficient to render the carrier

Chap. IV. liable for its loss or injury, if the nature and value are declared.  
Art. 19. Carriers Act, 1830, s. 5.

**20.** A common carrier may refuse to receive goods before he is ready to set out upon his accustomed journey. Per Holt, C.J., in *Lane v. Cotton*, 1 Ld. Raym. at p. 652.

The carrier may by special contract undertake to carry goods on the day of receipt, although they are delivered to him at an hour later than that at which he ordinarily receives goods for carriage upon that day. *Pickford v. Grand Junction Ry. Co.*, 12 M. & W. 766.

**21.** It is the duty of a common carrier who accepts goods for carriage to provide a vehicle or other means of carriage reasonably fit and sufficient to carry them, having regard to their nature and the character of the transit. It is also his duty to load or stow the goods properly in the vehicle, provided so that they may, having regard to their nature and to the risk and dangers attending the transit, be safely carried to their destination. See judgment of Lord Atkinson in *L. & N. W. Ry. Co. v. Richard Hudson & Sons, Ltd.*, [1920] A. C. at p. 336; 89 L. J. K. B. 323.

**22.** A common carrier is not bound to accept goods for carriage without such protection of packing as is necessary to enable him to carry the goods with a reasonable prospect of security. *Munster v. S. E. Ry. Co.*, 4 C. B. (N. S.) at p. 701; 27 L. J. C. P. 308; *Sutcliffe v. G. W. Ry. Co.*, [1910] 1 K. B. at p. 503; 79 L. J. K. B. 437.

There has been some conflict of judicial opinion as to the liability of a common carrier for damage to goods, which have

been accepted by him obviously badly packed, and which as a result of such bad packing have been damaged. In *Gould v. S. E. & Chatham Ry. Co.*, [1920] 2 K. B. 186; 89 L. J. K. B. 700, Atkin and Younger, L. J.J., sitting as a Divisional Court, held, following *Barbour v. S. E. Ry. Co.*, 34 L. T. 67, that bad packing was analogous to the defence of inherent vice, and that a common carrier was not precluded under the above circumstances from successfully setting up the defence of bad packing.

So also in *L. & N. W. Ry. Co. v. Richard Hudson & Sons, Ltd.*, [1920] A. C. 324; 89 L. J. K. B. 323, Lord Dunedin said, at p. 335 of the first of these reports, "though a common carrier is an insurer, yet if the damage arises from inherent vice or from bad packing of the goods, the common carrier is not liable."

On the other hand, Lord Atkinson, in the last-mentioned case at p. 340 of the same report, said: "If the imperfect nature of the packing be obvious to the carrier when the goods are tendered for his acceptance, and he receives them without objection, he will not be excused for any damage which may subsequently result from the imperfect packing. *Stuart v. Crawley*, 2 Stark. 323; *Richardson v. N. E. Ry. Co.*, L. R. 7 C. P. 75. . . . Again, if the defect in the packing from which damage is likely to occur be discovered on the journey, the carrier should take reasonable means to arrest the loss or deterioration therefrom. *Beck v. Evans*, 16 East, 244. And if the defect be discovered in time to prevent the forwarding of the goods, they should not be forwarded until the defect has been remedied. *Carr v. L. & N. W. Ry. Co.*, L. R. 10 C. P. 307."

On the point as to the carrier's liability for badly packed goods, it is submitted that the first of the above two views is to be preferred.

**23.** It is the duty of every person sending goods by a carrier to make use of no fraud or artifice to deceive him, whereby his risk is increased, or his care and diligence may be lessened. *Edwards v. Sherratt*, 1 East, 604; *Batson v. Donovan*, 4 B. & A. 21.

**Chap. IV.**  
**Art. 33.**

If the consignor fraudulently conceals the value and risk from the carrier, in order to be charged at a lower rate for carriage, he cannot recover more than the amount of the declared value. *M'Cance v. L. & N. W. Ry. Co.*, 31 L. J. Ex. 65; 34 L. J. Ex. 39; 7 H. & N. 477; 3 H. & C. 343.

If any fraud or deceit be practised on the carrier, as if the real value of the goods be deceitfully misrepresented to or fraudulently concealed from him, whereby he is induced to regard them as of trifling value, he is not liable in case they be lost or stolen from him. *Titchburne v. White*, 1 Stra. 145; *Gibbon v. Paynton*, 4 Burr. 2299; *Bradley v. Waterhouse*, 3 Car. & P. 318; *Walker v. Jackson*, 10 M. & W. 161; 12 L. J. Ex. 165.

**24.** A consignor who delivers dangerous goods to a common carrier for carriage without giving him notice of the nature of the goods so as to enable him to judge of their fitness, impliedly warrants that the goods are fit for carriage and undertakes to keep the carrier indemnified against damage arising from the nature of the goods. *Brass v. Maitland*, 6 E. & B. 470; *Farrant v. Barnes*, 11 C. B. (N. S.) 553; 31 L. J. C. P. 137; *Bamfield v. Goole Transport Co.*, [1910] 2 K. B. 94; 79 L. J. K. B. 1070; *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, [1922] 2 K. B. 742; 91 L. J. K. B. 807.

There has been some conflict of judicial opinion as to the duty owed by a consignor of dangerous goods to a carrier. In *Brass v. Maitland*, *supra*, where corrosive powder had been put on a general ship under the description of bleaching powder, Lord Campbell, C. J., and Wightman, J., held that, irrespective of the knowledge of the consignor, there was a warranty by him that the goods were fit for ordinary carriage, if delivered in a

state and under a name which did not disclose their dangerous nature. Crompton, J., on the other hand, thought that there was an obligation only to give notice if the consignor knew that the goods were dangerous, and that an ignorant person was under no liability. chap. IV.  
Art. 24.

In *Bamfield v. Goole Transport Co.*, *supra*, ferro-silicon, which is liable to give off dangerous gases, was delivered under the description of "general cargo" to the owner of a keel in his capacity of a common carrier. He was not informed of the nature of the goods, and the consignors did not know that they were dangerous. Owing to gases given off by the ferro-silicon the carrier was poisoned and died. In an action brought by his widow in respect of the loss occasioned by his death, and also of injury to herself arising from the above gases, it was held by the Court of Appeal that she was entitled to succeed. Vaughan Williams, L. J., held that the consignors owed only a duty to the carrier to communicate such information as they had, and therefore were negligent in not describing the goods as "ferro-silicon." On the other hand, Moulton and Farwell, L. JJ., held that inasmuch as a common carrier is bound by law to act on the request of the consignor, there is an implied and absolute warranty by the latter that the goods tendered for carriage are not dangerous.

In the recent case of *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, [1922] 2 K. B. 742; 91 L. J. K. B. 807, the defendants delivered to the railway company carboys containing corrosive fluid, which escaped and injured other goods carried in the same van. One of the questions for decision was whether the consignors had impliedly warranted that the carboys were fit for carriage and not dangerous. The Court of Appeal held that though the railway company were not common carriers of the carboys, as they had given notice that they did not profess to carry dangerous goods in that capacity, there was nevertheless a warranty by the consignors that the carboys might be safely carried. Bankes and Atkin, L. JJ., were of opinion that this

**IV.** arose because the railway company were under a statutory duty  
Art. 24. of affording reasonable facilities under sect. 2 of the Railway and Canal Traffic Act, 1854, for carrying the carboys which had been tendered under an innocuous description and in a safely packed condition. Scrutton, L. J., appears to have thought that the duty of the consignors was based on the general obligation of a man who asks somebody else to carry goods which by their nature cannot be openly inspected when they are brought to the carrier.

With regard to the carriage of dangerous goods by a railway company no person is entitled to require a company to carry goods which in the judgment of the company may be dangerous. See Railways Clauses Act, 1845, s. 105, *post*, p. 113.

By sect. 50 (2) of the Railways Act, 1921, the owner or consignor of dangerous goods (a) is liable to indemnify a railway company from and against all loss or damage which may result to the company, or to which the company may become liable owing to non-compliance with the byelaws, regulations and conditions applicable to such goods; and (b) is also to pay full compensation for injury to the company's servants and damage to their property so arising, unless it is proved that the injury or damage is due to the wilful misconduct of the company's servants.

The Home Secretary has power to make byelaws regulating the conveyance of explosives by land. See the Explosives Act, 1875, ss. 37, 38.

**25.** A common carrier from a place within to a place without the realm, is subject to the same liabilities at common law as a common carrier who carries only within the realm, and is, therefore, bound to accept all goods which are tendered to him for conveyance between those limits. *Crouch v. L. & N. W. Ry. Co.*, 14 C. B. 255; 23 L. J. C. P. 73.

As to goods received without the realm, see *Branlcy*

v. *S. E. Ry. Co.*, 12 C. B. (N. S.) 63; 31 L. J. C. P. 286; *Le Conteur v. L. & S. W. Ry. Co.*, L. R. 1 Q. B. 54; 35 L. J. Q. B. 40. Chap. IV.  
Art. 85.

26. A person who is a common carrier may at the same time be a warehouseman, and after he receives the goods, and before they are put *in itinere*, they may be lost or injured. In such case, if the carrier receives the goods into his own warehouse, for the accommodation of himself and his customers so that the deposit there is a mere accessory to the carriage, such person's responsibility, as a common carrier, begins with the receipt of the goods. *Hyde v. Trent Nav. Co.*, 5 T. R. 389.

That is, he then becomes responsible for all losses not occasioned by inevitable casualty; whereas, if he were a mere warehouseman, he is not liable, unless he has been guilty of want of ordinary care. *Forward v. Pittard*, 1 T. R. 27.

An innkeeper, if he is at the same time a common carrier, is liable, as such, for any loss to goods sent to his inn (and received there to be forwarded), which happens before they are put in transit. *Hyde v. Trent Nav. Co.*, *supra*, at p. 396 of the Report.

27. Where a person is at the same time a common carrier and a forwarding merchant, and he receives goods into his warehouse to be forwarded according to the future orders of the owners, if the goods are lost or damaged by fire, or otherwise, before such orders are received, or before the goods are put in transit, he is not chargeable as a common carrier, but only as a warehouseman. *Forward v. Pittard*, 1 T. R. 27; *Platt v. Hibbard* (American), 7 Cowen, 477; *Roskell v. Waterhouse*, 2 Stark. 461.



**Chap. IV.** It would seem that a wharfinger is bound only to the same  
**Art. 27.** degree of care as a warehouseman, and is not liable to the same extent as a common carrier. *Platt v. Hibbard, supra.*

**28.** A carrier of goods is always bound to follow instructions given by the owner or his agent where reasonably practicable. *Scothorn v. S. Staff Ry. Co.*, 8 Ex. 341; 22 L. J. Ex. 121.

Where an order is given to a carrier antecedently to the delivery of the goods to him, who assents to deal with them when delivered in a particular manner, a duty is imposed on him on the receipt of the goods to deal with them according to the order previously given; and the law implies a promise by him to perform such duty. *Streeter v. Horlock*, 1 Bing. 34; 7 Moore, C. P. 283.

As to the consignor's right to alter the destination of the goods or to demand delivery during transit, see *post*, p. 72.

## CHAPTER V.

### OBLIGATIONS OF A CARRIER DURING THE TRANSIT OF THE GOODS.

**29.** A common carrier is in all events liable by the custom of the realm for the loss of or injury to the goods carried, unless the loss or injury arises from—

Chap. V.  
Art. 29.

- (1) The act of God.
- (2) The King's enemies.
- (3) Inherent vice in or natural deterioration of the thing carried.
- (4) The act of the bailor.

Holt, C. J., said in *Coggs v. Bernard*, Smith's L. C. 12th ed. at p. 197: "As to the fifth sort of bailment, viz., a delivery to carry or otherwise manage for a reward to be paid to one that exeroises a public employment or a delivery to a private person, first, if it be to a person of the first sort and he is to have a reward, he is bound to answer for the goods at all events, and this is the case of the common carrier, common hoyman, master of a ship, &c."

"To give due security to property, the law has added to the responsibility of a carrier which immediately arises out of his contract to carry for a reward, namely, that of taking all reasonable care of it, the responsibility of an insurer. From his liability as an insurer the carrier is only to be relieved by two things, both so well known to all the country when they happen, that no person would be so rash as to attempt to prove that they had happened when they had not, namely, the act of God and the

**Chap. V.** King's enemies." Per Best, C. J., in *Riley v. Horne*, 5 Bing.  
**Art. 80.** 217.

It has been thought by some writers that the peculiar responsibility of common carriers is founded upon the principles of the Roman law. See Campbell on Negligence, 2nd ed. p. 80.

But in *Nugent v. Smith*, 1 C. P. D. at p. 428, Cockburn, C. J., refused to accept this doctrine. In his judgment, which traces the history of the principle in question, and which should be referred to, he said: "It is a misapprehension to suppose that the law of England relating to the liability of common carriers was derived from the Roman law, for the law relating to it was first established by our Courts with reference to carriers by land, on whom the Roman law, as is well known, imposed no liability in respect of loss beyond that of other bailees for reward."

"It appears from all the cases for one hundred years back, that there are events for which the carrier is liable, independent of his contract. By the nature of his contract, he is liable for all due care and diligence; and for any negligence he is suable on his contract. But there is a further degree of responsibility by the custom of the realm, that is, by the common law; a carrier is in the nature of an insurer." Per Lord Mansfield, in *Forward v. Pittard*, 1 T. R. 27, at p. 33.

As to the liability of a common carrier with regard to passengers, see *Clarke v. West Ham Corporation*, [1909] 2 K. B. 858; 79 L. J. K. B. 56.

**30.** "Act of God" means the operation of the elementary forces of nature unconnected with the agency of man or other cause, the effects of which cannot be guarded against by the ordinary exertion of human skill and prudence. *Nugent v. Smith*, 1 C. P. D. 423; 45 L. J. C. P. 697.

In the last-mentioned case the defendant, a common carrier by sea, received from the plaintiff a mare to be carried from London

to Aberdeen. In the course of the voyage the ship met with rough weather, and the mare, being much frightened and struggling violently, suffered injuries of which she died. No negligence was proved against the defendant, but the Common Pleas Division held him to be liable, on the ground that the rough weather was not so violent and unusual as to amount to the "act of God," nor was the struggling of the mare alone enough to show that it was from her inherent vice that she was injured. The Court of Appeal reversed this decision.

Chap. V.  
Art. 80.

A fall of rain, of a kind which could not reasonably have been anticipated, amounts to *vis major*. *Nichols v. Marsland*, L. R. 10 Ex. 255; 2 Ex. D. 1; 44 L. J. Ex. 114; 46 L. J. Ex. Div. 174.

The act of God means not merely an accidental circumstance but something overwhelming: *Oakley v. Portsmouth, &c. Steam-packet Co.*, 25 L. J. Ex. 101; which could not happen by the intervention of man, as storms, lightning and tempests. *Forward v. Pittard*, 1 T. R. 33.

A frost of extraordinary severity has been held to constitute *vis major*, or, in this sense, an act of God: *Blyth v. Birmingham Waterworks Co.*, 11 Ex. 781; so, too, has a great and unexpected fall of snow: *Briddon v. Gt. N. Ry. Co.*, 28 L. J. Ex. 51; and a violent tempest. *Nugent v. Smith*, *ante*; *River Wear Commissioners v. Adamson*, 2 App. Cas. 743, 749; 47 L. J. Q. B. 193. Accident produced by any physical cause which is irresistible, such as a loss by lightning or storms, by the perils of the sea, by an inundation or earthquake, or by sudden death or illness, is the "act of God." Story on Bailment, 9th ed. p. 28.

A common carrier is not bound to use extraordinary efforts or incur extra expense in order to surmount obstructions caused by the act of God, such as a fall of snow. *Briddon v. Gt. N. Ry. Co.*, 28 L. J. Ex. 51.

If the goods have been lost or damaged by rains or floods or other instances of "*vis major*," the circumstances attendant thereupon must be regarded, in order to determine whether the proxi-

Chap. V. mate cause of the loss or damage was the act of God, or the act,  
Art. 20. misconduct, or negligence of the carrier. *Smith v. Shepherd*,  
 cited in *Abbott on Shipping*, 14th ed. p. 578; *Amies v. Stevens*,  
 1 Stra. 127.

In order that an extraordinary natural event, such as a very high tide, should be, in the legal sense of the words, an act of God, it is not necessary that such an event should never have happened before; it is sufficient that its happening could not have been reasonably expected. If such an event has happened once, but there is nothing to lead to the inference that it is likely to recur, it does not, if it happens a second time, cease to be an act of God. *Nitrophosphate, &c. Manure Co. v. London and St. Katharine Docks Co.*, 9 Ch. D. 503.

But an act of God is not a good defence if there has been default on the part of the carrier or other person sought to be charged with liability. *Ibid.*; *Philips v. Clark*, 2 C. B. N. S. 156; 26 L. J. C. P. 168; see *Blower v. G. W. Ry. Co.*, L. R. 7 C. P. at p. 663; see *post*, p. 42.

See also *Dale v. Hall*, 1 Wils. 281; *Corington v. Willan, Gow*, 115.

A loss through fire occasioned by lightning would be a loss by the act of God. *Forward v. Pittard*, 1 T. R. 27. In this case the carrier was held liable, inasmuch as the fire arose from some act of man, although it began a hundred yards distant without negligence on the part of the carrier.

By the Roman law the carrier's responsibility extended to fire; and the policy of the English law has adopted a similar rule, on the ground that fire may be collusively raised in order to favour depredations. Until the passing of the Mercantile Law Amendment (Scotland) Act, 1856, s. 17, a different rule prevailed in Scotland, fire being regarded as *damnum fatale*.

31. "King's enemies" means foreign or domestic enemies with whom the Sovereign of the carrier is at war. *Russell v. Niemann*, 17 C. B. (N. S.) 163;

34 L. J. C. P. 10; *Secretary of State for War v. Mid. G. W. Ry. Co.*, [1923] 2 Ir. R. 102. Chap. V.  
Art. 81.

The reason for this exception appears to be that the carrier has no remedy against these enemies. See *Southcote's Case*, Co. Rep. Part 4, 83 (g).

*Russell v. Niemann*, *supra*, was decided on an exception in a bill of lading, and the question of a common carrier's liability was not raised. The judges in that case (Willes and Byles, JJ.) said that the expression "King's enemies" at least included the enemies of the sovereign of the carrier. It may be, therefore, that the expression might be extended to include the enemies of the Sovereign of the owner of goods carried in a neutral ship, but there appears to be no authority on this point.

In the recent Irish (Free State) case of *Secretary of State for War v. Mid. G. W. Ry. Co.*, [1923] 2 Ir. R. 102, Dodd, J., held that a rebellion supported by an army is equivalent to a state of war, that a theft from a common carrier by armed raiders, acting on behalf of such an army, was an act done by "King's enemies," and that therefore the carrier was not responsible for the loss of the article stolen by them.

A war is not confined to one waged against foreign enemies, but will include a rebellion by subjects exercising a usurped power against the Crown. See *Curtis v. Mathews*, [1918] 2 K. B. 825; [1919] 1 K. B. 425; 88 L. J. K. B. 529.

Loss by pirates is to be included among "perils of the sea," and therefore as being in the nature of an inevitable accident, for which, the carrier will not be liable. See *Pickering v. Barkley*, Styles, 132. In *Morse v. Slue*, 1 Vent. at p. 239, Hale, C. J., said: "If rebels break a gaol so that the prisoners escape, the gaoler is liable; but it is otherwise with enemies, so the master is not liable where the ship is spoiled by pirates."

32. "Inherent vice" means such vice and natural quality in the thing carried as by their internal development tend to its destruction or injury. *Blower*

Chap. V.  
Art. 28.

v. *G. W. Ry. Co.*, L. R. 7 C. P. 655; 41 L. J. C. P. 268; *Nugent v. Smith*, 1 C. P. D. 19, 423; 45 L. J. C. P. 19, 697; *Lister v. L. & Y. Ry. Co.*, [1903] 1 K. B. 878; 72 L. J. K. B. 385.

In *Blower v. G. W. Ry. Co.*, *supra*, a bullock escaped from a truck by climbing over or forcing its way through the bars of the truck without negligence on the part of the railway company and was killed. It was held that the company were not liable for this consequence of an "inherent vice" in the animal.

"A common carrier is liable as an ordinary bailee for negligence; and he is liable for a loss occasioned by negligence, even though the act of God or of the Queen's enemies conduce to the loss. But he is further liable as an insurer for losses which occur through no negligence on his part. It is only necessary therefore to observe that an insurer is not liable for accidents happening through the inherent vice of the thing insured, but only for such as happen through adventitious causes," per Willes, J., in *Blower v. G. W. Ry. Co.*, *supra*.

In *Lister v. L. & Y. Ry. Co.*, *supra*, an engine on wheels, with shafts attached to draw it, was being hauled by horses in charge of the railway company's servants. One of the shafts being rotten broke, and the engine was damaged. It was held by a Divisional Court that the inherent unfitness of the engine for the carriage contemplated was inherent vice, and that the company were not liable.

If a pipe of wine bursts in the wagon, the carrier is not liable if he can show that the wine was in ferment, and that when the pipe burst he was driving gently. *Farrar v. Adams*, Buller, N. P. 69. But if a cask of brandy should leak during the journey, and the carrier take no means to stop the leak when it comes to his knowledge, he will be liable for the loss. *Beck v. Evans*, 16 East, 244.

The same principle applies to natural deterioration in the case of perishable goods. See *The Ida*, 32 L. T. 541.

As to a carrier's liability for badly packed goods, see *ante*, Chap. V. p. 30. Art. 39.

**33.** A common carrier is not liable for the loss of or injury to the thing carried when such loss or injury is caused by the intervention or negligence of the owner or his agent. *Bradley v. Waterhouse*, 3 C. & P. 318; *Talley v. Great Western Ry. Co.*, L. R. 6 C. P. 44; 40 L. J. C. P. 9; *Butterworth v. Brownlow*, 34 L. J. C. P. 267.

But if a carrier expressly undertakes to be responsible for the safety of goods he will be liable, although the owner of the goods sends a servant to look after them. See *Robinson v. Dunmore*, 2 Bos. & Pul. 416.

**34.** Although the loss of or injury to the thing carried is due to the act of God, King's enemies or inherent vice in such thing, the carrier will be liable if his negligence or want of skill has contributed thereto. *Amies v. Stevens*, 1 Stra. 127; *Forward v. Pittard*, 1 T. R. 27; *Siordet v. Hall*, 4 Bing. 607; *Gill v. Man., Sheff. & Linc. Ry. Co.*, L. R. 8 Q. B. 186; 42 L. J. Q. B. 89.

The carrier will also be liable where the loss or injury is due to the above causes if he has broken his contract of carriage, *e.g.*, by deviation, and he is unable to show that the loss or injury must have occurred in any event. *Davis v. Garrett*, 6 Bing. 724; *James Morrison, Ltd. v. Shaw, Savill Co., Ltd.*, [1916] 2 K. B. 783; 115 L. T. 508. See also *L. & N. W. Ry. Co. v. Neilson*, [1922] 2 A. C. 263; 91 L. J. K. B. 684.

**35.** A common carrier is liable for the loss of or injury to the thing carried caused by theft or riot.



Chap. V.  
Act. 35.

*Coggs v. Bernard*, 1 Sm. L. C. 12th ed. at p. 203;  
*Forward v. Pittard*, 1 T. R. at p. 34.

In *Morse v. Slue*, 1 Vent. at p. 239, Hale, C. J., said: "And if a carrier be robbed by a hundred men, he is never the more excused."

In *Forward v. Pittard*, 1 T. R. 27, Lord Mansfield refers to the riot of 1780 in London as an instance which did not protect a common carrier.

Lord Mansfield held, in *Barclay v. Cuculla-y-Gaud*, 3 Doug. 389, cited 1 T. R. 33, nom. *Barclay v. Heygena*, that the master of a ship on board of which goods have been laden in the River Thames for a foreign port is liable for the loss of the goods occasioned by a forcible robbery while the ship is lying in the river. "At first the rule appears to be hard, but it is settled on principles of policy, and when once established every man contracts in reference to it, and there is no hardship at all."

But where a thief obtained possession from the owners of goods intended for carriage by pretending to be the servant of the designated carriers, and was afterwards prosecuted by the latter to conviction for larceny, the carriers laying the property in the stolen goods in themselves, Rowlatt, J., held that the carriers (who were common carriers) were not liable in the absence of negligence, inasmuch as they had not ratified the possession by the thief under a contract of carriage. See *Harrisons and Crossfield, Ltd. v. L. & N. W. Ry. Co.*, [1917] 2 K. B. 755; 86 L. J. K. B. 1461.

See also *Reg. v. Villensky*, [1892] 2 Q. B. 597.

**36.** A common carrier is liable for the loss of or damage to goods occasioned by fire resulting neither from the act of God nor of King's enemies, although there is no actual negligence on his part. *Forward v. Pittard*, 1 T. R. 27; *Thorogood v. Marsh*, Gow. 105. See also *Dale v. Hall*, 1 Wilson, 281.

A loss by lightning is loss by act of God. See *Forward v. Pittard*, *supra*.

37. The liability of a common carrier is independent of any contract made by him. *Pozzi v. Smith*, 8 A. & E. 963. In the event of loss of or injury to the goods carried he is presumed to be responsible, and it lies on him to rebut this presumption. *Hawkes v. Smith*, Car. & M. 72.

Chap. V  
Art. VI

He will be liable although there may have been no actual negligence on his part and the injury may have been caused by the negligence of a third person. *Trent Nav. Co. v. Ward*, 3 Esp. 127; 4 Doug. 287.

In *Trent Nav. Co. v. Ward*, *supra*, the ship of a common carrier, on a voyage from Hull to Gainsborough, drove on to an anchor in the River Trent, and was in consequence sunk, and the goods on board injured. The accident was occasioned by the neglect of a third party in not having his buoy out to mark the place where his anchor lay. It was held that the carrier was bound to make good the loss. Ashurst, J., said: "If this sort of negligence were to excuse the carrier when he finds that an accident had happened to goods from the misconduct of a third person, he would give himself no further trouble about the recovery of them."

But if the misconduct of the third person is caused by the orders of the owner of the goods, the carrier will not be responsible. *Butterworth v. Brownlow*, 34 L. J. C. P. 267.

Carriers who are not common carriers stand in the position of ordinary bailees, and are only liable in respect of negligence established against them by evidence. See *Richardson v. N. E. Ry. Co.*, L. R. 7 C. P. at p. 81; 41 L. J. C. P. 60, *ante*, p. 8; and *Sutcliffe v. G. W. Ry. Co.*, [1910] 1 K. B. 478; 79 L. J. K. B. 437. Such a carrier is bound to bring reasonable care to the execution of every part of the duty accepted by him, but he is not liable for acts done by his servants outside the scope of their employment. *Cheshire v. Bailey*, [1905] 1 K. B. 237; 74 L. J. K. B. 176.

See *Searle v. Laverick*, L. R. 9 Q. B. 122; 43 L. J. Q. B. 43.

Unap. V.  
Art. 38.

38. If goods are injured by any cause for which the carrier is not originally liable, it is still his duty to check and arrest the loss or deterioration resulting therefrom and to take all reasonable care of them. *Notara v. Henderson*, L. R. 7 Q. B. 225; 41 L. J. Q. B. 158.

But a fair allowance must be made for the difficulties in which the carrier may be involved, and all the circumstances taken into account. See *The Savona*, [1900] P. 252.

As to the liability of a carrier for badly packed goods, see *ante*, p. 30.

39. In case of emergency or special danger it is the duty of a carrier to take special steps to protect the goods under his control. It is not enough that the ordinary methods employed by him are in general sufficient for that purpose. *Morse v. Slue*, 1 Vent. at p. 239; *Leck v. Maester*, 1 Camp. 138; see also *Brabant v. King*, [1895] A. C. at p. 640; 64 L. J. P. C. 161.

In *Morse v. Slue*, *supra*, Hale, C. J., in giving the judgment of the Court, said: "*Objection*.—There were the usual number of men to guard the ship. . . *Answer*.—True, for the ship, but not with reference to the goods, for the number ought to be more or less, as the post is dangerous and the goods of value."

But a carrier is not under an obligation to take precautions against possible negligence on the part of persons who are not in his employment nor under his control, unless there is reasonable ground for apprehending that extraordinary precautions are required. *Daniel v. Met. Ry. Co.*, L. R. 5 H. L. 45; 40 L. J. C. P. 121.

40. In cases of accident and emergency a carrier, <sup>Chap. V</sup>~~Art. 40~~ if possible, should obtain instructions from the owner of the goods carried, but if that is not possible, he is authorised to act as an agent of necessity, and as such to do all that is necessary to secure the safety of the goods entrusted to him. In such a case he is entitled to charge the owner of the goods with the expenses properly incurred in so doing. *Notara v. Henderson*, L. R. 7 Q. B. 225; 41 L. J. Q. B. 158; *Cargo ex Argos*, L. R. 5 P. C. 134; *G. N. Ry. Co. v. Swaffield*, L. R. 9 Ex. 132; 43 L. J. Ex. 89; *Coldman v. Hill*, [1919] 1 K. B. 443; 88 L. J. K. B. 491.

In *Coldman v. Hill*, *supra*, at p. 456 [1919] 1 K. B., Scrutton, L. J., said: "A bailee who finds goods in his control threatened by a danger, to prevent which may involve unusual exertion or expenditure outside his usual duty, must either inform the owner of the threatened danger, if he can by doing so get instructions to act, or enable the owner to act, in time to avert the danger; or if he cannot give the owner information in time, he must act as agent of necessity on behalf of, and at the expense of, the owner, taking the steps which a reasonable owner would take in defence of property of the value in question."

41. A carrier by land is authorised in an emergency to sell the goods entrusted to him, provided that a real necessity for the sale exists and it is commercially impossible to obtain in time the instructions of the owner of the goods as to what is to be done with them. *Sims v. Midland Ry. Co.*, [1913] 1 K. B. 103; 82 L. J. K. B. 67; *Springer v. G. W. Ry. Co.*, [1921] 1 K. B. 257; 89 L. J. K. B. 1010.

The necessity for sale as a rule will only arise in the case of

Chap. V.  
Art. 41.

perishable goods. A carrier by land is usually able to communicate with the owner of the goods, and must try to get his instructions before he sells the goods. See *Springer v. G. W. Ry. Co.*, *supra*.

42. A carrier will be guilty of stealing goods notwithstanding that he has lawful possession of them, if, being a bailee, he fraudulently converts the same to his own use or the use of any person other than the owner. See Larceny Act, 1916, s. 1 (1).

## CHAPTER VI.

### LIMITATION OF THE LIABILITY OF A COMMON CARRIER.

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#### 1. *By the Carriers Act, 1830.*

**43.** By the Carriers Act, 1830, s. 1, as amended Chap. VI.  
Art. 48. by the Railways Act, 1921 (s. 56 and Sixth Schedule), a common carrier by land or, if a railway company, then also, as from the appointed day, by water, is not liable for the loss of or injury to —

(1) Bank notes of any bank in Eng<sup>d</sup> l, Scotland, or Ireland.

(2) Bills of exchange.

A document in the form of a bill of exchange, accepted by the person to whom it was directed, but having no drawer, and found by the jury to be of no value when delivered to the carriers, is not within the Act as a "bill," though it might be as a writing. *Stoessiger v. S. E. Ry. Co.*, 3 E. & B. 549; 23 L. J. Q. B. 293.

(3) Cheques on bankers.

(4) China.

(5) Clocks.

(6) Coins (gold or silver) of any country.

(7) Deeds.

(8) Engravings.

Chap. VI.  
Art. 49.  
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(9) Foreign coins (gold or silver).

(10) Furs.

It is doubtful whether this includes articles made partly of fur and partly of wool. *Mayhew v. Nelson*, 6 Car. & P. 58.

(11) Glass.

This includes looking-glasses: *Owen v. Burnett*, 3 L. J. Ex. 76; 2 C. & M. 353; also smelling-bottles and the like. *Bernstein v. Bazendale*, 6 C. B. (N. S.) 251; 28 L. J. C. P. 265.

(12) Gold coin.

(13) Gold in a manufactured or unmanufactured state.

(14) Gold plate or plated articles.

(15) Jewellery.

See Trinkets.

(16) Lace.

But not machine-made lace. Carriers Act Amendment Act, 1865.

(17) Maps.

This includes a case containing a set of maps. *Wyld v. Pickford*, 8 M. & W. 443; 10 L. J. Ex. 382.

(18) Money (gold or silver).

(19) Notes of any bank of the United Kingdom.

(20) Notes for the payment of money.

(21) Orders for the payment of money.

(22) Paintings.

The word "paintings" in this Act is used in its ordinary and popular sense to denote works of art. They must be articles

of artistic value, as paintings, and not mere designs or patterns. *Woodward v. L. & N. W. Ry. Co.*, 3 Ex. D. 121; 47 L. J. Ex. 263. In that case coloured imitations of rugs and carpets and coloured working designs, each of them valuable and designed by skilled persons and hand painted, but having no value as works of art, were held not to be "paintings" within the Act. Chap. VI.  
Art. 48.

(23) Pictures.

A picture with the frame is to be regarded as one article which comes within the Act. *Henderson v. L. & N. W. Ry. Co.*, L. R. 5 Ex. 90; 39 L. J. Ex. 55.

(24) Plate or plated articles (gold or silver).

(25) Precious stones.

(26) Promissory notes.

(27) Securities for payment of money.

(28) *Silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials.*

This item has been repealed as regards carriage by railway companies by the Railways Act, 1921, s. 56 and Sixth Schedule.

This includes silk hose: *Hart v. Baxendale*, 20 L. J. Ex. 338; 6 Ex. 769; elastic silk web: *Brunt v. Midland Ry. Co.*, 33 L. J. Ex. 187; 2 H. & C. 889; a truss of silk: *Butt v. G. W. Ry. Co.*, 20 L. J. C. P. 241; 11 C. B. 140; and a silk dress made up for wearing: *Flowers v. S. E. Ry. Co.*, 16 L. T. N. S. 329; also silk watchguards.

(29) Silver, coin, or plate or plated articles.

(30) Stamps.

(31) Stones (precious).



Chap. VI.  
Art. 43.

(32) Timepieces of any description.

This includes a ship's chronometer. (*Le Conteur v. L. & S. W. Ry. Co.*, L. R. 1 Q. B. 54; 35 L. J. Q. B. 40.

(33) Title deeds.

(34) Trinkets.

It was said in *Bernstein v. Baxendale*, 6 C. B. (N. S.) 251; 28 L. J. C. P. 265, that it is impossible, with precise accuracy, to define what are "trinkets" within the meaning of the Act. But as the closest approximation to this, it was said that they must be articles of mere ornament, or if ornament and utility be combined, the former must be the predominant quality. And, as instances, it was said bracelets, shirt-pins, rings, brooches, and ornamented shell and tortoise-shell portemonnaies, however small their intrinsic value, are trinkets. An eye-glass attached to a gold chain is not a trinket. *Davey v. Mason*, 1 Car. & M. 45.

(35) Watches.

(36) Writings.

or any of them contained in any parcel or package which shall have been delivered either to be carried for hire or to accompany the person of any passenger, when the value of such article or articles contained in such package shall *exceed* the sum of 25*l.* in the case of carriage by railway companies after the appointed day, and 10*l.* in the case of other common carriers, unless at the time of delivering the parcel or package containing them to the carrier its value and nature have been declared, and an increased charge for the carriage, if required, has been paid, or an engagement to pay the same been accepted by the person receiving such parcel or package. The Carriers Act, 1830, s. 1, as amended by Railways Act, 1921 (s. 56 and Sixth Schedule).

As to the appointed day, see *post*, pp. 221—2.

Chap. VI.  
Art. 63.

By the Railways Act, 1921, s. 56 and Sixth Schedule, the maximum undeclared value of articles within the Carriers Act, 1830, for which a railway company are liable when carrying as common carriers, has been raised as from the appointed day to 25*l*. But this does not apply to other common carriers: see sect. 56 of the Railways Act, 1921; and in their case the limit remains fixed at 10*l*.

The Carriers Act was passed in consequence of common carriers putting up in their receiving offices notices of terms and conditions of carriage, restrictive of their common law undertaking and liability,—a practice which produced frequent litigation upon the question how far a person delivering goods for carriage became bound by such notices, and what evidence was sufficient to incorporate them into the contract for carriage.

The Carriers Act extends to all the articles enumerated in the first section, even although they do not come within the words of the preamble, as being articles “of great value in small compass.” *Owen v. Burnett*, 2 C. & M. 353; 3 L. J. Ex. 76.

“Value” means intrinsic value at the time the parcel is delivered. *Stoessiger v. S. E. Ry. Co.*, 3 E. & B. 549; 23 L. J. Q. B. 293.

Where the plaintiff bought goods for 9*l*. 19*s*., and agreed to sell them to the consignee for over 10*l*., and they were lost in transit, it was held that the carriers were protected by the Act, as the value exceeded 10*l*. *Blankensee v. L. & N. W. Ry. Co.*, 45 L. T. 761.

Pictures exceeding the value of 10*l*. were laid upon one another without any covering or tie in the owner’s wagon, which had sides, but no top, and the wagon was delivered to a railway company, and placed by their servants on one of their trucks for carriage by the railway. It was held that the pictures were “contained in a parcel or package” within the meaning of sect. 1 of the Carriers Act, so as to give the company the protection of that statute. *Whaite v. L. & Y. Ry. Co.*, L. R. 9 Ex. 67; 43 L. J. Ex. 47.

Where a packing case contains articles, some within the statute and some not, the value of the case and of the articles not within

Chap. VI  
Art. 43.

the statute may be recovered, though the statute has not been complied with as regards the articles within it. *Treadwin v. G. E. Ry. Co.*, L. R. 3 C. P. 308; 37 L. J. C. P. 83.

The term "loss" in sect. 1 of the Carriers Act means a loss by the carrier, such as by abstraction by a stranger, or by his own servants not feloniously, or by losing them from vehicles in the course of carriage, or by mislaying them, so as not to know where to find them, and the like; it includes temporary as well as permanent loss; so that if a carrier temporarily loses undeclared goods, and on finding them delivers them to the owner within a reasonable time, he will not be liable: if, however, he does not so deliver them, he is liable for this detention. *Hearn v. L. & S. W. Ry. Co.*, 24 L. J. Ex. 180; 10 Ex. 793, as explained by *Millen v. Brasch*, 10 Q. B. D. 142, 145, 147.

A loss by robbery is within the words "loss or injury." *Covington v. Willan*, Gow, 115; *De Rothschild v. Royal Mail Steam Packet Co.*, 7 Ex. 734.

44. By the Railways Act, 1921, Sixth Schedule, the following new section shall be added to the Carriers Act, 1830, after sect. 10:—

"In this Act the expression 'common carrier' shall include a common carrier by land who is also a carrier by water, and as regards every such common carrier this Act shall apply to carriage by water in the same manner as it applies to carriage by land."

This new section applies only to Railway Companies, and will take effect as from the appointed day: see sect. 56 (1) of the Railways Act, 1921.

The effect of this new section will be to reverse the decision in *L. & N. W. Ry. Co. v. J. P. Ashton & Co.*, [1920] A. C. 84; 88 L. J. K. B. 1157, where it was held that the Carriers Act, 1830, only applied when goods coming within it were lost by land, and therefore that where certain furs which had been delivered to the railway company for carriage from London to

Belfast, without their value being declared, were lost, and there was no evidence to show whether this occurred during the land or sea part of the journey, the railway company were not protected, and were liable. Chap. VI.  
Art. 44.

In the above case the transit was partly by land and partly by water, but the wording of the new section would appear to cover a case where a railway company carried wholly by water.

As to the appointed day, see *post*, pp. 221—2.

45. Under sect. 1 of the Carriers Act, 1830, the carrier is entitled to have an express declaration from the consignor or his agent of the contents of a parcel at the time of delivery, whether at the office of the carrier or the house of the consignor or elsewhere, no matter how obvious the nature of such contents may be. *Boys v. Pink*, 8 Car. & P. 361; *Baxendale v. Hart*, 6 Ex. 769; 21 L. J. Ex. 123; *Doey v. L. & N. W. Ry. Co.*, [1919] 1 K. B. 623; 88 L. J. K. B. 737; *Rosenthal v. London County Council*, [1924] W. N. 165.

In *Baxendale v. Hart*, *supra*, Patteson, J., said: "We think that the Act requires the person who sends the goods to take the first step by giving that information which he alone can give. . . . All that follows the first step which is to be taken by the sender of the goods, and the carrier is not liable unless the declaration be made."

In *Rosenthal v. London County Council*, *supra*, Bailhache, J., thought that the real point decided in *Hart v. Baxendale*, *supra*, was that the customer must make the declaration wherever the goods are tendered, and not only when tendered at the carrier's place of business.

At common law a consignor was under no duty to declare the nature and value of the contents of a package. *Walker v. Jackson*, 10 M. & W. 161; 12 L. J. Ex. 165.

In *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. 373, Wright, J.,

Chap. VI.  
Art. 45.

held that a consignor of valuables within the Carriers Act, 1830, was not estopped from suing for damages occasioned by their loss, although she had notice that the railway company would not receive them unless declared and insured. In that case the company did not rely upon the Carriers Act, but upon a special contract embodying the terms of that Act. Wright, J., in his judgment, said: "Since the case of *Walker v. Jackson*, it seems to have been regarded as settled law that a carrier cannot succeed on this ground" (i.e., the failure to call attention to the nature of the goods) "in the absence of positive misrepresentation or other actual fraud."

In *Walker v. Jackson*, the point as to there being no declaration of value under the Carriers Act, 1830, was not raised, the defendants there relying on the argument that attention ought to have been drawn to the nature of the goods, notwithstanding that no question had been asked.

In *Doey v. L. & N. W. Ry. Co.*, [1919] 1 K. B. 623; 88 L. J. K. B. 737 (which was a case under the Carriers Act, and not as in *Shaw's Case* under a special contract), a glass globe over 10*l.* in value was delivered with another parcel to the railway company without any declaration of value. The owner told the railway clerk that he wished the goods to be insured, and he was charged a lump sum for both parcels based on the ordinary company's risk rate, but excluding the extra rate payable for goods coming within the Carriers Act. No explanation was given as to how the amount of the charge was made up. The globe having been damaged in transit, the owner sued the company. The Divisional Court (Avory and Lush, JJ.) held that the value not having been declared the railway company were not *prima facie* liable, that they were not estopped from denying that there was a special contract under sect. 6 of the Carriers Act, 1830, inasmuch as the value should have been declared, and that there was no such contract, and therefore no liability on their part.

A declaration as to the nature of goods made under sect. 64 of the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36),

is not a declaration of value within sect. 1 of the Carriers Act, 1830. (Per Kennedy, J., in *Hirschel and Meyer v. G. E. Ry. Co.*, 22 T. L. R. 661.) Chap. VI  
Art. 45.

A declaration of value referring generally to several parcels of goods included in one consignment, without specifying the contents and value of each parcel, is not a sufficient declaration within the Carriers Act, 1830. *Ibid.*

46. The refusal to declare the contents of a package will not justify the carrier in refusing to carry it, but only excuses the loss. *Crouch v. L. & N. W. Ry. Co.*, 14 C. B. 255; 23 L. J. C. P. 73.

The carrier has an insurable interest in goods within the Carriers Act, even though their value has not been declared in accordance with the Act. *L. & N. W. Ry. Co. v. Glynn*, 28 L. J. Q. B. 188.

47. The increased rate of charge is to be notified by some notice affixed in legible character in some public and conspicuous part of the office, warehouse, or other receiving house where such parcels or packages are received by the carrier for the purpose of conveyance, stating the increased rates of charge required to be paid over and above the ordinary rate of carriage as a compensation for the greater risk and care to be taken for the safe conveyance of such valuable articles; and all persons sending or delivering parcels or packages containing such valuable articles at such office are bound by such notice without further proof of the same having come to their knowledge. Carriers Act, 1830, s. 2.

In cases decided before the Act it had been held that carriers' notices must be large and legible. See *Clayton v. Hunt*, 3 Camp. 26.

In *Behrens v. G. N. Ry. Co.*, 7 H. & N. 950; 3 L. J. Ex.

Chap. VI. 299, the plaintiff sent a valuable picture by railway and declared  
Art. 47. its nature and value at the time of its delivery for carriage, and the company did not demand any increased rate to which they were entitled under sect. 2 of the Carriers Act, and only the ordinary charge was paid. It was held that the company were not protected by the Act in respect of an injury done to the picture during the journey.

48. If the carrier refuse, on demand, to give a receipt for the goods acknowledging the same to be insured, this will deprive him of the protection of the Act, and he is liable to refund the extra charge. Carriers Act, 1830, s. 3.

49. A delivery of a parcel at any "office, warehouse or receiving house," used or appointed for the receiving of parcels, is sufficient to render the carrier liable for its loss or injury, if the nature and value are declared. Carriers Act, 1830, s. 5.

An inn, at which a coach regularly stops for the purpose of taking up parcels, is a receiving house within the Act. *Syms v. Chaplin*, 5 A. & E. 634.

"Receiving house" includes an office kept by an independent proprietor. *Stephens v. L. & S. W. Ry. Co.*, 18 Q. B. D. 121; 56 L. J. Q. B. 171. See also *Burrell v. North*, 2 Car. & K. 680.

It is a good delivery within the Act to a servant of the carrier on the road. *Baxendale v. Hart*, 21 L. J. Exch. 123; 6 Ex. 769.

It is also a good delivery to the carrier if it is made to his book-keeper, coachman or other servant; sect. 1 of the Act.

It has been held that the contract entered into by the booking-office keeper, who takes in parcels to be forwarded by carriers, is only to deliver safely to the carrier, not to the consignee. *Gilbart v. Dale*, 5 A. & E. 543.

50. Nothing in the Carriers Act is to extend, annul, or affect any special contract for the conveyance of goods and merchandize. Carriers Act, 1830, s. 6. Chap. VI.  
Act. 88.

The above section applies only to contracts, the provisions of which are inconsistent with the exemption claimed by carriers under the first section of the Carriers Act, 1830. Any contract which would render the carriers liable for the loss of goods beyond the value of 25*l.* in the case of railway companies, and 10*l.* in the case of other common carriers, whether they shall have had notice of the value or not, is a special contract not to be affected by sect. 6 of the Act. Such a contract has full force and effect, notwithstanding the exemption conferred upon them as common carriers by the first section. *Baxendale v. G. E. Ry. Co.*, L. R. 4 Q. B. 244; 38 L. J. Q. B. 137.

The fact of goods being received by a common carrier under a special contract does not deprive him of the protection of the Act, unless the terms of the contract are inconsistent with the exemption thereby conferred. *Ibid.*; *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, [1922] 2 K. B. 742; 91 L. J. K. B. 807.

In *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. 373, Wright, J., said: "We are, however, bound by the decision of the Exchequer Chamber in *Baxendale v. Great Eastern Ry. Co.*, to hold that sect. 6 of the Act of 1830 does not give validity to special contracts generally, but refers only to contracts by which the company voluntarily renounces the protection given by sect. 6 of the Act."

51. The Carriers Act does not protect the carrier from any loss arising from the felonious act of any servant in his employ. Carriers Act, 1830, s. 8.



Chap. VI.  
Art. 81.

Every person actually engaged in the performance of the contract of carriage and delivery is a servant of the carrier within the meaning of this section.

Where a carrier enters into a sub-contract with other parties with respect to the carriage of goods which he has undertaken to carry, the servants employed by the latter are "servants in the employ" of the carrier within the meaning of the Act. *Machu v. L. & S. W. Ry. Co.*, 2 Ex. 415; *Doolan v. Midland Ry. Co.*, 2 App. Cas. 792, 810; *Stephens v. L. & S. W. Ry. Co.*, 18 Q. B. D. 121; 56 L. J. Q. B. 161.

The above section "cannot be construed as a general enactment that common carriers by land are in all cases to be liable for theft by their servants. The terms of the section confine it to the case of the valuables specified in the Act" (*i.e.*, The Carriers Act, 1830). Per Wright, J., in *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. at p. 383.

Negligence has nothing to do with the question, but a mere suspicion that the loss arose from felony by the carrier's servant is not sufficient: it must be proved. *Rimell v. G. W. Ry. Co.*, 27 L. J. C. P. 201; 18 C. B. 575.

The plaintiff must establish a *prima facie* case that the loss has arisen from the felonious acts of the carrier's servants, and it is not sufficient to show that it is most probable that it is due to this cause. *M'Queen v. G. W. Ry. Co.*, L. R. 10 Q. B. 569; 44 L. J. Q. B. 130.

It is not necessary to show a loss by the felony of any particular servant of the carrier. *Vaughton v. L. & N. W. Ry. Co.*, L. R. 9 Ex. 93; 43 L. J. Ex. 75.

In *Kirkstall Brewery Co. v. Furness Ry. Co.*, L. R. 9 Q. B. 468; 43 L. J. Q. B. 142, information given by the defendants' station-master to a police constable that one of defendants' servants was suspected of having stolen the missing parcel, was held to have been rightly admitted in evidence to show a felony by the defendants' servants.

In *Way v. Great Eastern Ry. Co.*, 1 Q. B. D. 692; 45 L. J. Q. B. 174, certain pictures, above the value of 10*l.*, were de-

Chap. VI.  
Art. 31.

livered to the defendants to be carried, and were by them placed in their van in their yard preparatory to their transmission. A man, by representing himself to be one C. (who was a driver in the employ of M., the defendants' sub-contractor), obtained from the defendants' delivery clerk, a pass and other documents, which enabled him to take the van from the yard, and so to steal the pictures. An action having been brought for their value, the material issue was whether they were lost through the felonious act of the defendants' servants. A case embodying the above facts, with power to the Court to draw all necessary inferences, having been stated, it was held that the defendants were not estopped from denying that the thief was their servant, and that the Court would not infer that he was. See also *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. 373.

In the Irish case of *Gogarty v. G. S. & W. Ry. Co.*, I. R. 9 C. L. 233, it was held that it was not sufficient for the plaintiff's evidence to disclose facts consistent with a felonious taking, but that it lay upon her to prove that it was more probable that the goods were stolen than that they were lost through accident or mistake.

**52.** If goods within the Carriers Act be sent to a carrier for conveyance without a declaration of the nature and value of such goods, and without paying or engaging to pay an increased charge, the carrier is not liable for their loss, though it happen by the gross negligence of himself or his servants. *Hinton v. Dibben*, 2 Q. B. 646; 11 L. J. Q. B. 113.

In that case, Lord Denman said: "The question for our decision is, whether, since the passing of the Act, a carrier is liable for the loss of goods, therein specified, by reason of gross negligence. . . . In deciding upon this statute, we must, of course, be regulated by its language; and the state of the law at the time of its passing is material only so far as it enables us to discover the mischief for which it was intended to apply a remedy. . . . By the first

**Chap. VI.**  
**Art. 53.**

section, the exemption of the carrier from liability is absolute and complete, unless the preliminary thereby made indispensable is complied with by the owner of the goods. . . . By sect. 4, it is provided that no public notice or declaration shall exempt any carrier from his liability at common law for the loss of or injury to any articles other than those in the first section enumerated, but that, as to such other articles, his liability, as at common law, shall remain notwithstanding such notice. From which exception, as to the liability of the carrier in respect of goods not enumerated, it seems impliedly to follow, that as to those which are, protection is afforded to him in the manner above set forth."

**53.** A carrier is not deprived of the protection afforded by the Carriers Act, 1830, by the fact that the loss or injury to the goods happens after they have been negligently taken by him beyond their point of destination. *Morritt v. N. E. Ry. Co.*, 1 Q. B. D. 302; 45 L. J. Q. B. 289.

In that case the plaintiff, a passenger by the defendants' railway, took with him, along with other luggage, two pictures which were duly labelled to D. The value of the pictures, which exceeded 10*l.*, was not declared, nor was any increased rate of charge paid. The pictures were accidentally carried beyond D. and considerably damaged, and it was held that the defendants were not liable, on the ground that they were protected by the provisions of the Carriers Act.

**54.** A carrier is protected by sect. 1 of the Carriers Act, 1830, from liability both for the loss, whether temporary or permanent, of undeclared goods included in that section and for consequential damages resulting therefrom. *Millen v. Brasch*, 10 Q. B. D. 142; 52 L. J. Q. B. 127.

In that case the plaintiff delivered to the defendants, carriers

for hire from London to Rome, a trunk to be sent from London to Liverpool, and thence by ship to Italy. The trunk contained wearing apparel, consisting of silk dresses and other articles within the Carriers Act, exceeding 10*l.*, but no declaration of their value was made. Owing to the negligence of the defendants, the trunk was sent to the Victoria Docks, in London, and thence to New York. It was eventually recovered, and delivered to the plaintiff in Rome. Some of the contents were injured, and the plaintiff claimed for the loss of the trunk and injury to its contents, and also for the re-purchase of other articles in Rome. It was held by the Court of Appeal—first, that the trunk was lost within the meaning of the Carriers Act, and that the defendants were protected by the provisions of that Act for the loss and injury to its contents, notwithstanding that the loss was temporary; secondly, that the plaintiff was not entitled to recover, as consequential damages for non-delivery of the undeclared articles within due time, the cost of the re-purchase of other articles at Rome at enhanced prices, inasmuch as such non-delivery was the result of a loss in respect of which the defendants were protected by the Carriers Act.

**55.** A person bringing an action for the loss of or injury to articles specified in sect. 1 of the Act is entitled, subject to compliance with that section, to recover back such increased charges as are payable under sect. 2, in addition to the value of the parcel or package. Carriers Act, 1830, s. 7.

The carrier is not concluded as to the value of a parcel by the declared value, but may require from the party suing proof of the actual value, and he shall be liable to such damages only as shall be proved, not exceeding the declared value. Carriers Act, 1830, s. 9.

If the consignor declares the value of the goods, he is bound by his declaration, and cannot afterwards show that the value

chap. VI. of the goods exceeded that declared. *M'Cance v. L. & N. W. Ry. Co.*, 34 L. J. Ex. 39.

56. Where there is one entire contract to carry partly by land and partly by sea, a common carrier, if a railway company, is entitled as from the appointed day to the benefit of the Carriers Act, 1830, in respect of the whole journey: see Railways Act, 1921, s. 56 and Sixth Schedule; and in other cases in respect of the land transit, provided the loss of or injury to the goods occurred during the same. *Le Conteur v. L. & S. W. Ry. Co.*, 1 Q. B. 54; 35 L. J. Q. B. 40; *L. & N. W. Ry. Co. v. J. P. Ashton & Co.*, [1920] A. C. 84; 88 L. J. K. B. 1157.

He is also entitled to the protection of the Merchant Shipping Acts, as to so much of the journey as is performed by sea. *London & S. W. Ry. Co. v. James*, L. R. 8 Ch. 241; 42 L. J. Ch. 337. For the limitation of a shipowner's liability, see *post*, p. 163. As to the appointed day, see *post*, pp. 221—2.

## 2. *By Special Contract or Notice.*

57. A common carrier cannot by public notice or declaration limit or in any wise affect his liability at common law for any articles or goods carried by him. Carriers Act, 1830, s. 4.

Provided that nothing in this Act contained shall be construed to annul or affect any special contract between a common carrier and any other parties for the conveyance of goods and merchandise. Carriers Act, 1830, s. 6.

This section (4) only applies to public notices. Such notices

were common before the passing of the Act and were addressed to the public at large, raising a question in every case whether the notice was brought home to the particular person.

Chap. VI.  
Art. 57.

But except in the case of railway and canal companies (see below) a common carrier may limit his liability by delivering to the consignor a ticket or notice containing conditions to that effect. See *G. N. Ry. Co. v. Morville*, 21 L. J. Q. B. 319; *Walker v. York & N. Mid. Ry. Co.*, 2 E. & B. 750; 23 L. J. Q. B. 73; and if the conditions are brought home to the consignor, or, in other words, if he has actual or constructive notice of them, he will be bound by the resulting special contract. See *Henderson v. Stevenson*, L. R. 2 H. L. Sc. App. 470; *Harris v. G. W. Ry. Co.*, 1 Q. B. D. 515; 45 L. J. Q. B. 720; *Marriott v. Yeoward*, [1909] 2 K. B. 987; 79 L. J. K. B. 114.

Prior to 1832 the weight of authority supported the view that a common carrier could not exempt himself by contract from liability in cases of gross negligence, misconduct, or fraud on the part of himself or his servants; but the later cases decided that this was not the law, and that a common carrier might by special notice brought home to the customer limit his liability in such cases. See *Hinton v. Dibben*, 2 Q. B. 646; 11 L. J. Q. B. 113; *Shaw v. York & N. Mid. Ry. Co.*, 13 Q. B. 347; 18 L. J. Q. B. 181; *Austin v. M. S. & L. Ry. Co.*, 16 Q. B. 600; 20 L. J. Q. B. 440.

The law as to common carriers' notices prior to the passing of the Railway and Canal Traffic Act, 1854, is thus summed up by Blackburn, J. (as he then was), in his opinion in *Peck v. N. Staffordshire Ry. Co.*, 32 L. J. Q. B. at p. 250; 10 H. L. C. 473: "We find that by the express enactment of the Legislature in 11 Geo. 4 & 1 Will. 4, c. 68 (i.e., the Carriers Act, 1830), no public notice or declaration could as such in anywise affect the liability of a carrier as regarded goods in general, though special contracts might be made as at common

**Chap. VI.**  
**Art. 87.**

law; and it had been decided that such notice or declaration when brought home to the customer did operate as being the basis of a special contract to carry on the conditions contained in such notices. It had also been decided that such conditions, when thus made part of a special contract, were binding even when protecting the company from responsibility for all loss or injury however caused. It had further been decided that a special contract ought to be inferred from the act of a party sending goods after the receipt of a notice, even where the party protested against the notice."

By sect. 7 of the Railway and Canal Traffic Act, 1854, railway and canal companies were made liable for loss of, or injury to animals or goods, occasioned by the neglect or default of their servants, notwithstanding any notice given by them, but they were able to protect themselves by a special contract signed by or on behalf of the owner of the animals or goods, the conditions of which were adjudged to be just and reasonable.

These provisions of the Traffic Act of 1854 have been modified by sects. 42 to 45 of the Railways Act, 1921, the short effect of which is that the Railway Rates Tribunal are to settle the terms and conditions upon which railway traffic is to be carried, which conditions are to be deemed to be reasonable. A railway company and a trader, however, are still at liberty to make a special contract in writing, subject to the provisions of the Railway and Canal Traffic Acts, 1854 and 1888. See *post*, p. 132.

By sect. 6 of the Act of 1830, nothing therein is to affect any special contract between carrier and customer. This on its face would appear to apply to all special contracts, and this seems to have been the view of Blackburn, J., in *Peck v. N. Staffordshire Ry. Co.*, see p. 247 of 32 L. J. Q. B.; see also *G. N. Ry. Co. v. Morville*, 21 L. J. Q. B. 319. It, however, was held by the Exchequer Chamber in *Baxendale v. G. E. Ry. Co.*, L. R. 4 Q. B. at p. 254, that this section only applies to contracts

the provisions of which are inconsistent with the exemption claimed by carriers under sect. 1 of the Act. Chap. VI.  
Art. VI.

Where, before the Carriers Act, a carrier had published two different notices, each of which was before the public at the time of the carriage, that one was held to bind him which was least beneficial to himself; and where at the time of the carriage he delivered a written notice without any limitation of responsibility, that was held to nullify his prior notice containing a limitation. *Munn v. Baker*, 2 Stark. 255; *Cobden v. Bolton*, 2 Camp. 108; *Phillips v. Edwards*, 3 H. & N. 813, 820.

58. Where a carrier is not a common carrier of the particular description of goods tendered to him for conveyance, and has the option therefore of refusing them, he may prescribe his own terms of conveyance. If the party delivering such goods to be carried has notice of the terms on which such a carrier carries them, and sends such goods, he must be taken to agree that they shall be carried on those terms: and there is then a special contract between him and the carrier for their conveyance, unless the carriage is by railway or canal, so as to necessitate a signed special contract under the Railway and Canal Traffic Act, 1854. *Walker v. York & N. Mid. Ry. Co.*, 2 E. & B. 750; 23 L. J. Q. B. 73.

But with regard to such articles as the common carrier is bound by his public profession to carry, the owner has a right to insist that the common carrier shall receive the goods without subjecting him to any unreasonable condition. *Garton v. Bristol & Exeter Ry. Co.*, 1 B. & S. at p. 162; 30 L. J. Q. B. at p. 294. See also *Kirkman v. Shawcross*, 6 T. R. at p. 17.



Chap. VI.  
Art. 59.

59. A special contract exempting a carrier from liability will only apply where the excepted events happen in the course of the carrier carrying out the agreed contract, and it will not protect the carrier if those events happen while he is doing something which he has not contracted to do. *Lilley v. Doubleday*, 7 Q. B. D. 510; *Gunyon v. S. E. & C. Ry. Co.*, [1915] 2 K. B. 370; 84 L. J. K. B. 1212; *L. & N. W. Ry. Co. v. Neilson*, [1922] 2 A. C. 263; 91 L. J. K. B. 680.

The exceptions in a contract of carriage by land or sea do not apply unless the goods are carried by the route and in the manner stipulated for. It will make no difference whether the goods are sent on the wrong route from the outset, or are diverted at some intermediate point. See *L. & N. W. Ry. Co. v. Neilson*, *supra*, and see judgment of Court of Appeal in the same case: [1922] 1 K. B. 192.

In the last-mentioned case certain theatrical luggage was accepted by the railway company for carriage from Llandudno to Bolton, *via* Manchester, on an owner's risk consignment note. The luggage was not labelled, but it was placed in a special van labelled to Bolton. The van label came off, and on arriving at Manchester the van, by a mistake of the railway servants, was unloaded, some of the luggage being put in the cloak-room, and the rest being sent to various places indicated by old labels on the different packages. The luggage finally arrived at Bolton. The proprietor of the theatrical company, to whom the luggage belonged, suffered loss by the delay. The House of Lords held that the conditions of the consignment note exempting the railway from liability for "loss, misconveyance, &c.," did not protect them since the agreed transit had been departed from by the dispersal of the luggage at Manchester. With regard to the meaning of the word "misconveyance" in the consignment note,

the House of Lords approved the statement of Scrutton, L. J., on this point in the Court of Appeal, [1922] 1 K. B. at p. 202, Chap. VI.  
Art. 54. namely: "If the defendants want to protect themselves against the negligence of their servants, they must use ordinary English and not invented words of doubtful meaning."

60. In construing a special contract of carriage, words of general exemption from liability are only intended (unless the words are clear) to relieve the carrier from liability where there has been no misconduct or default on his part or that of his servants. *Steinman v. Angier Line*, [1891] 1 Q. B. 619; 60 L. J. Q. B. 425.

An exemption in general words, not expressly relating to negligence, even though the words are wide enough to include loss by the negligence or default of the carrier's servants, must be construed as limiting the liability of the carrier as assurer, and not as relieving him from the duty of exercising reasonable skill and care. If the carrier desires to relieve himself from the duty of using by himself and his servants reasonable skill and care in the carriage of goods, he must do so in plain language and explicitly, and not by general words or by coined words of no recognised significance. *Price & Co. v. Union Lighterage Co.*, [1903] 1 K. B. 750; [1904] 1 K. B. 412; 72 L. J. K. B. 374; 73 L. J. K. B. 222; *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. 373; *L. & N. W. Ry. Co. v. Neilson*, [1922] 2 A. C. 263; 91 L. J. K. B. 680.

Where a carrier is negligent or otherwise breaks his contract and loss or damage occur to the goods en-

Chap. VI.  
Art. 60.

trusted to him which may or may not be the result of his breach of contract, it is for him to prove that his breach of duty did not cause such loss or damage, and it is not the duty of the owner of the goods to prove that it did. *Joseph Travers, Ltd. v. Cooper*, [1915] 1 K. B. 73; 83 L. J. K. B. 1787; *Coldman v. Hill*, [1919] 1 K. B. 443; 88 L. J. K. B. 491; and the unreported decision of the House of Lords in *Morison, Pollexfen and Blair v. Walton*, referred to in the first of the above cases.

61. On the other hand, if a special contract which purports to protect the carrier from liability in all cases of loss or damage directs attention to the cause of the same, the carrier will not be liable, even though the loss or damage be due to his negligence or that of his servants. *Manchester, Sheffield and Lincolnshire Ry. Co. v. Brown*, 8 App. Ca. 703; 52 L. J. Q. B. 132; *Joseph Travers, Ltd. v. Cooper*, [1915] 1 K. B. 73; 83 L. J. K. B. 1787.

In *M. S. & L. Ry. Co. v. Brown*, *supra*, the railway company had agreed to carry at a reduced rate upon condition that they were relieved "from all liability for loss or damage by delay in transit, or from whatever other cause arising." The House of Lords decided that apart from any question as to reasonableness under the Traffic Act of 1854, the contract did in effect protect the company from the negligence of their servants.

In *Joseph Travers, Ltd. v. Cooper*, *supra*, goods were loaded into a barge under a contract whereby the barge-owner was not to be liable "for any damage to goods however caused, which can be covered by insurance." The goods having been injured under circumstances which left it doubtful whether the damage was due to the negligence of the barge-owner's servant or other-

wise, the Court of Appeal (Buckley, L. J., dissenting) held that although the onus was on the defendant to show that his servant had not been negligent, the terms of the contract in any case relieved him from liability. The onus of proof is on the carrier to explain the loss or damage. In the unreported case of *Morison, Pollexfen and Blair v. Walton*, referred to in *Joseph Travers v. Cooper*, [1915] 1 K. B. at p. 97, Lord Loreburn, L. C., said: "It is for him (the bailee) to explain the loss himself, and if he cannot satisfy the Court that it occurred from some cause independent of his own wrongdoing, he must make that loss good."

Chap. VI.  
Art. III.

## CHAPTER VII.

## DELIVERY OF THE GOODS TO THE CONSIGNEE.

Chap. VII.  
Art. 62.

62. Every person who undertakes to carry as a common carrier impliedly engages to proceed without deviation from the usual and ordinary course, to the place of delivery, and there deliver the goods according to the usage of trade, the ordinary course of business, or the terms of his contract. *Davis v. Garrett*, 6 Bing. 716.

63. A common carrier is bound only to carry by the route which he professes to be his route, and must use reasonable diligence in delivering the goods, having reference to the means at his disposal for forwarding them. He is not bound to carry goods by the shortest route. *Hales v. L. & N. W. Ry. Co.*, 4 B. & S. 66; 32 L. J. Q. B. 292; *Myers v. L. & S. W. Ry. Co.*, L. R. 5 C. P. 3; 39 L. J. C. P. 57.

If a carrier deviate from the usual route, and the goods be lost, even by inevitable accident, he is liable; for, under such circumstances, the loss is traced back through all the intermediate causes to the first departure from duty. *Davis v. Garrett*, 6 Bing. 716.

64. Where goods are delivered to a carrier, to be delivered at a particular place, the owner of the goods may countermand the direction at any moment of their

transit, and require the carrier to deliver at a different destination to that originally named, or may demand back his goods on payment of the carriage to their original destination. *Scothorn v. S. Staff. Ry. Co.*, 8 Ex. 341; 22 L. J. Ex. 121. Chap. VII.  
Art. 64.

If a carrier does not comply with an order of the owner of goods countermanding delivery and delivers the goods to the consignee originally named, the owner may sue him for conversion or breach of duty. If, on the other hand, the owner recognises and adopts such delivery, for example, by suing the consignee for the price of the goods, he cannot afterwards treat the act of the carrier as misdelivery and sue him in respect of the same. *Verschures Creameries v. Hull and Netherlands Steamship Co.*, [1921] 2 K. B. 608; 91 L. J. K. B. 39.

**65.** A carrier may deliver the goods wherever he and the consignee agree, if there is no special contract between the consignor and the carrier as to the place of delivery. *Cork Distilleries Co. v. Gt. S. & W. Ry. Co.*, L. R. 7 H. L. C. 269; 8 Ir. R. C. L. 334.

A contract by a carrier to deliver beyond the terminus of his own route is binding on him. *Muschamp v. Lanc. and Preston Ry. Co.*, 8 M. & W. 421; 10 L. J. Ex. 460.

A carrier may be justified in taking goods into a warehouse, even though his instructions are to deliver ex-ship to a railway company, and in that case he will be protected by any relevant exemption from liability contained in the contract of carriage. See judgment of Rowlatt, J., in *Eastern Counties, &c. Association v. Newhouse*, 86 L. J. K. B. 172; 115 L. T. 308.

**66.** When a person has received goods in the capacity of a common carrier, he is not discharged from his

Chap. VII.  
Art. 68.

liability in that capacity until he has either delivered the goods to the consignee or his assignees, or until a reasonable time has elapsed after the consignee has had notice of the arrival of the goods, for him to come and receive them. *Bourne v. Gatliffe*, 11 C. & F. 45; 8 Scott, N. R. 604; 3 M. & G. 643. So long as a carrier retains the possession of or the control over the goods, or is to perform any further duty, either by custom or by contract as a carrier, he is responsible for their safety. *Cairns v. Robins*, 8 M. & W. 258; 10 L. J. Ex. 452. See Articles 69 and 151.

In the last-mentioned case a carrier delivered goods to a consignee, accompanied by a printed bill which stated that goods remaining in the carrier's warehouse for three months would be sold to pay expenses. The consignee sent the goods back to the warehouse, and after remaining there for more than a year they were lost. It was held that the carrier was not a gratuitous bailee, that it was consistent with his character, both as carrier and warehouseman, for him to keep the goods in consideration of his general remuneration for carrying, and that he was liable for the value of the goods.

67. A carrier of goods is not, in the absence of a special contract to deliver at a particular time, bound to deliver within any given time, but only within a reasonable time having regard to the circumstances of the case; and he is not responsible for the consequences of delay arising from causes beyond his control.

Since his first duty is to carry safely, he is justified in incurring delay, if delay is necessary to secure the safe carriage. *Taylor v. G. N. Ry. Co.*, L. R. 1 C. P. 385; 35 L. J. C. P. 210; *Sims v. Midland Ry. Co.*, [1913] 1 K. B. 103; 82 L. J. K. B. 67.

In *Taylor v. G. N. Ry. Co.*, *supra*, the railway company were prevented, by an obstruction on their line, from carrying the plaintiff's goods within the usual time. The obstruction was caused by an accident resulting solely from the negligence of another company who had statutory running powers over their line, and it was held that the defendants were not liable to the plaintiff for damage to his goods caused by the delay. Chap. VII.  
Art. 37

In calculating what is a reasonable time a carrier is entitled to take into account a strike of his servants. *Sims v. Midland Ry. Co.*, *supra*.

If some unforeseen event, such as a snowstorm, occurs, a carrier is not bound to use extraordinary efforts, involving additional expense, in order to forward the goods in his charge. See *Briddon v. G. N. Ry. Co.*, 28 L. J. Ex. 51.

But it would appear that he ought to use extraordinary efforts to preserve the goods under such circumstances. See *ante*, p. 46.

The expression "non-delivery of any consignment" means failure to deliver the consignment as a whole, and will not include short delivery. See *G. W. Ry. Co. v. Wills*, [1917] A. C. 148; 86 L. J. K. B. 641.

**68.** A common carrier by land is bound, in the absence of any established usage, or any special contract to the contrary, to deliver the goods at the house of the consignee if his residence be known. *Hyde v. Trent and Mersey Navigation Co.*, 5 T. R. 389; *Storr v. Crowley*, 1 M'Cl. & Y. 129; *Duff v. Budd*, 3 Br. & B. 177.

If a common carrier conveys goods specially addressed, and tenders them for delivery at a reasonable hour at the address given, his liability as a common carrier will cease, but as an involuntary bailee he will



Chap. VII.  
Art. 68.

still be bound to act with reasonable care with respect to such goods. *Heugh v. L. & N. W. Ry. Co.*, L. R. 5 Ex. 51; 39 L. J. Ex. 48.

If a carrier delivers goods elsewhere than at the place to which they are addressed, and to a person not entitled to receive them, he is liable for the goods if lost. *Gosling v. Higgins*, 1 Camp. 450; *Garnett v. Willan*, 5 B. & A. 53; *Hoare v. G. W. Ry. Co.*, 37 L. T. 186.

If it be the carrier's course of trade to deliver goods at the consignee's residence, he is clearly bound to do so. *Golden v. Manning*, 2 W. Bl. 916.

In *Hyde v. Trent and Mersey Nav. Co.*, 5 T. R. 389, the subject was considerably discussed, whether the carrier was bound to deliver to the individual at his house, or whether he discharged himself from liability by delivery to a porter at the inn in the place of destination. The opinion of Lord Kenyon was, that the carrier was thus discharged, but the three other judges, Buller, Ashurst, and Grose, JJ., were of opinion that the carrier was bound to deliver at the consignee's house.

If goods are addressed to a fictitious person and the carrier in the ordinary course of business delivers them to a person who fraudulently professes to be the person to whom they are addressed, the carrier is not liable for conversion or the loss of the goods. *M'Kean v. M'Ivor*, L. R. 6 Ex. 36; 40 L. J. Ex. 30.

Martin, B., in delivering judgment, said: "I think the carriers obeyed the directions given to them, and therefore, for that reason, I am of opinion they have been guilty of no wrong, because they dealt with these goods in the manner in which they were directed to do. For the purpose of making carriers guilty of a conversion of goods, there must be something beyond this—some fault or some wrong; and, in my judgment, it is a question of fact

whether or not their conduct with respect to the delivery of the goods was negligent." Comp. VII.  
Art. 92.

And see *Harrisons and Crossfield, Ltd. v. L. & N. W. Ry. Co.*, [1917] 2 K. B. 755; 86 L. J. K. B. 1461.

If goods, the subject of a sale, are delivered to an apparently respectable person at the address indicated by the buyer of such goods, and are then stolen by the person so receiving them, the loss will fall on the buyer and not on the seller or carrier. See *Galbraith and Grant, Ltd. v. Block*, [1922] 2 K. B. 155; 91 L. J. K. B. 649.

69. It is the duty of a carrier to keep goods which are to be fetched away a reasonable time for the consignee to come and fetch them. *Bourne v. Gatliffe*, 8 Scott, N. R. 604; 3 M. & G. 643; *Patscheider v. G. W. Ry. Co.*, 3 Ex. D. 153. But if the consignee delays to take the goods away within a reasonable time, the obligation of the carrier becomes that of an ordinary bailee, and is confined to taking proper care of the goods as a warehouseman. *Chapman v. G. W. Ry. Co.*, 5 Q. B. D. 278; 49 L. J. Q. B. 420; *Manchester, &c. Federation of Coal Traders v. L. & Y. Ry. Co.*, 10 Ry. & Ca. Tr. Ca. 127.

A carrier is bound to give notice to the consignee of the arrival of the goods where it is not part of his duty to deliver them. *Bourne v. Gatliffe*, 8 Scott, N. R. 604; 3 M. & G. 643; *Golden v. Manning*, 2 W. Bl. 916.

If the goods are destroyed by fire after they are deposited in the carrier's warehouse, and before a reasonable time has elapsed for the consignee to fetch them away, the carrier is liable. *Hyde v. Trent and Mersey Navigation Co.*, 5 T. R. 389. See also *White v. Humphrey*, 11 Q. B. 43; *Cairns v. Robins*, 8 M. & W. 258.

Chap. VII.  
Art. 89.

A railway company, as carriers, brought goods by their railway to one of their stations, and immediately gave the consignee notice of their arrival, and that they held the goods "not as common carriers, but as warehousemen, at owner's sole risk, and subject to the usual warehouse charges." The consignee acquiesced in this, and the goods remained in the charge of the company, and, by their negligence, were damaged. In an action by the consignee against the company:--*Held*, that on the true construction of the notice, the company were not exempted from all liability, but were bound as bailees to take reasonable care of the goods. *Mitchell v. Lancashire and Yorkshire Ry. Co.*, L. R. 10 Q. B. 256; 44 L. J. Q. B. 107.

The consignees of certain goods were informed by a railway company that the goods would arrive at their station on the following day, and that the transit would not extend beyond the expiration of 24 hours after arrival, after which the company would hold the goods as warehousemen. The goods were being carried at a reduced rate at owner's risk. They duly arrived at the terminal station, and were placed on a bank or receiving place from which they were taken away by some unknown person, and were never found. They never were placed in the company's warehouse. No person was waiting to receive the goods on their arrival. It was held by Kennedy, J., that the transit had not been ended, and that the defendant company were relieved from liability by the terms of the special contract. *Hirschel and Meyer v. G. E. Ry. Co.*, 22 Times L. R. 661.

If a common carrier receives goods to be carried to a named destination, where they are to be deposited in his warehouse in accordance with a recognised usage, his liability as a common carrier ceases upon the arrival of the goods at their destination, after which he holds them not as a common carrier, but as a mere warehouseman. *Rowe v. Pickford*, 8 Taun. 83; *In re Webb*, *ib.* 443.

The keeping of the goods in the warehouse in such cases is, as was observed by Buller, J., in *Garside v. Trent Navigation Co.*,

4 T. R. at p. 582, "not for the convenience of the carrier, but of the owner of the goods; for when the voyage to Manchester is performed, it is for the interest of the carrier to get rid of them directly."

70. If the goods are tendered to the consignee and he refuses to accept them, the carrier is not necessarily bound to give the consignor notice of the refusal, but should do what is reasonable under the circumstances. *Hudson v. Baxendale*, 2 H. & N. 575; 27 L. J. Ex. 93.

In that case the carriers, on the refusal by the consignee to receive a puncheon of gin, put it into a warehouse, and left it there for two months without giving notice to the consignor. At the end of this period, it was found that a portion of its contents had escaped by leakage. In an action by the consignor it was held that the carriers were not liable. Bramwell, B., said at p. 582, 2 H. & N.: "I doubt if a consignor has a right to impose on a carrier the burden of doing anything after he has tendered the goods. But assuming that he has, it is sufficient if the carrier does what is reasonable. It was urged that the carrier must inform the consignor if the consignee refuses to receive the parcel: I wholly deny that as a rule of law. There may be cases in which such a course may be reasonable. But in others the consignor may not be known."

When a carrier by land has carried goods to their destination, in pursuance of a contract with their owner, and through the default of the latter the goods are left in the carrier's hands, he is bound as an agent of necessity to take reasonable measures for the preservation of the goods, and can recover from the owner payments he has made on account of expenses so incurred. *Gt. N. Ry. Co. v. Swaffield*, L. R. 9 Ex. 132; 43 L. J. Ex. 89.

A common carrier, after a refusal of the goods at a consignee's address, is no longer liable as a carrier, but is an involuntary

Chap. VII.  
Art. 70. bailee, and is only bound to act with reasonable care and caution with respect to the custody of the goods. *Storr v. Crowley*, 1 M'Cl. & Y. 129; *Heugh v. L. & N. W. Ry. Co.*, L. R. 5 Ex. 51; 39 L. J. Ex. 48. He should retain the goods at the place of detention a reasonable time. *Crouch v. G. W. Ry. Co.*, 3 H. & N. 183; 27 L. J. Ex. 345.

Where it is impossible for a carrier to deliver and a real necessity exists for their sale (e.g., in the case of perishable goods), it is the duty of the carrier to communicate, if possible, with the owner of the goods so as to obtain his instructions as to their disposal. *Springer v. G. W. Ry. Co.*, [1921] 1 K. B. 257; 89 L. J. K. B. 1010. If this is not possible, the carrier becomes an agent of necessity under the above circumstances, and is entitled to sell the goods on behalf of their owner. *Sims v. Midland Ry. Co.*, [1913] 1 K. B. 103; 82 L. J. K. B. 67.

But if the person to whom the goods have been wrongly delivered has been negligent in receiving them, the carrier is entitled to be indemnified by him in respect of any compensation paid to the rightful consignee. *Lancashire and Yorkshire Ry. Co. and Others v. MacNicol*, 88 L. J. K. B. 601.

In the last-mentioned case a railway company by mistake delivered certain goods to the defendant, who with reasonable care might have observed that they were not intended for him. Having paid compensation to the true consignee, the company sued the defendant for the amount so paid. It was held by the Divisional Court that the railway companies were not estopped since the defendant had been negligent, and that he was liable for the wrongful conversion of the goods.

A carrier is bound to deliver goods entrusted to him at the place to which they are addressed; and if he delivers them elsewhere, trover lies against him. *Stephenson v. Hart*, 1 Moo. & P. 357; 4 Bing. 476.

A common carrier is not estopped from disputing the title of the person from whom he has received goods to carry. And it is an answer to trover against the carrier by such person, that

the goods have been delivered to the real owner on his claiming them. *Sheridan v. New Quay Co.*, 28 L. J. C. P. 58. Chap. VII.  
Art. 70.

"If any carrier employed to deliver iron, leather, fur or hemp to any workman, to be prepared or wrought up, designedly delivers the same to any other person than the person to whom such materials were ordered or intended to be delivered by the owner thereof, he is liable to be prosecuted." The Frauds by Workmen Act, 1777. s. 9.

In the case of goods carried across a ferry, it is for the jury to determine from evidence of practice at the ferry whether the owners of the ferry have undertaken to carry goods up a slip, or only to land them on the shore. *Walker v. Jackson*, 10 M. & W. 161; 12 L. J. Ex. 165.

71. If a carrier fails to deliver the goods entrusted to him, the owner is entitled to recover from him such damages as might reasonably be expected to result from their non-delivery having regard to the value of the goods to the owner at the time and place at which they ought to have been delivered. *Hadley v. Bazendale*, 9 Ex. 341; 23 L. J. Ex. 179; *Woodger v. G. W. Ry. Co.*, L. R. 2 C. P. 318; 36 L. J. C. P. 177.

Exceptional damages cannot be recovered unless at the time of delivery the special circumstances were made known to the carrier and he expressly or impliedly undertook to be responsible for any special damage arising from his failure to perform his contract. *Horne v. Mid. Ry. Co.*, L. R. 8 C. P. 131; 42 L. J. C. P. 59.

See *post*, p 181

## CHAPTER VIII.

## THE RIGHTS OF THE CARRIER.

1. *Special Property in the Goods.*

Ch. VIII.  
Art. 72.

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72. A common carrier has a special property in goods delivered to him, and having once acquired the lawful possession of the goods for the purpose of carriage, he is not obliged to restore them to the owner again, even if the carriage be dispensed with, unless and until he be paid his due remuneration; for by the acceptance of the goods he has already incurred risks. *Wilbraham v. Snow*, 1 Vent. 52; *Higgins v. Bretherton*, 5 Car. & P. 2.

A common carrier may maintain an action against any person who takes the goods out of his possession, or does any injury to them: *Arnold v. Jefferson*. 1 Ld. Raym. 275; or if he be robbed he may indict the person robbing him. *Deakin's case*. 2 Leach. 862.

His right to maintain such action is not affected by the fact that he (the carrier) would have a good defence to an action brought against him by the owner of the goods. *The Winkfield*, [1902] P. 42; 71 L. J. P. 21.

In the last-mentioned case it was held by the Court of Appeal that the Postmaster-General was entitled to maintain claims in respect of mails and post-office parcels which had been lost as the result of a shipping collision, although he was under no liability to the persons interested in such mails and parcels.

The right arises from the carrier's general interest in carrying the goods and his liability for loss or injury to them during their transit. Bacon, *Abridg. Contract*, C; Jones on Bailm. 80. CH. VIII.  
ART. 72.

If a common carrier claims possession of stolen goods in order to prosecute the thief, he does not claim as carrier, but only as a bare bailee. See *Harrisons and Crossfields, Ltd. v. L. & N. W. Ry. Co.*, [1917] 2 K. B. 755; 86 L. J. K. B. 1461.

## 2. *Insurable Interest in the Goods.*

73. A carrier, who has undertaken the liability of a common carrier, may insure goods which are in his possession for the purpose of conveyance by him, but the presumption is that he effects such insurance for his own protection and not as agent, and in any case the fact that he has so insured does not, in the absence of a contract to the contrary, limit his liability as a common carrier. *Hill v. Scott*, [1895] 2 Q. B. 371, 713; 65 L. J. Q. B. 87.

Common carriers may insure goods in their possession, as carriers, describing them as "goods in trust as carriers," and such an insurance will cover the whole value of the goods. If the carrier has insured against fire and the goods are so destroyed, the carrier will be entitled to recover their full value from the insurer, and it will make no difference that by special contract or otherwise the carrier is not responsible for loss through fire. *L. & N. W. Ry. Co. v. Glyn*, 28 L. J. Q. B. 188; 5 Jur. N. S. 1004.



3. *Reasonable Hire.*

Ch. VIII.  
Art. 74.  
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74. The price charged by a carrier for the conveyance of goods must be no more than a reasonable remuneration: *Harris v. Packwood*, 3 Taun. 264; but apart from statute he is not bound to charge all persons equally. Per Willes, J., in *Branley v. S. E. Ry. Co.*, 12 C. B. (N. S.) 63; 31 L. J. C. P. 286; *Baxendale v. Eastern Counties Ry. Co.*, 4 C. B. (N. S.) 63; 27 L. J. C. P. 137.

A common carrier is entitled to make a higher charge for the greater risk attending the carriage of valuable goods, but the charge must be reasonable. *Harris v. Packwood*, *supra*.

If the price of carriage is not paid before the goods are received, the carrier cannot sue for such price till they are delivered. *Barnes v. Marshall*, 18 Q. B. 785; 21 L. J. Q. B. 388.

To support an action for refusing to carry, it is sufficient if the consignor was ready and willing to deal for ready money, and notifies that readiness and willingness to the carrier; the money is not required to be paid down until the carrier receives the goods which he is bound to carry. *Pickford v. Grand Junc. Ry. Co.*, 8 M. & W. 372; 10 L. J. Ex. 342.

75. The person primarily liable to pay the price of the carriage is the person with whom the carrier contracts. In every case it must be a matter of construction of the particular contract. *Dawes v. Peck*, 8 T. R. 330; *Dickenson v. Lano*, 2 F. & F. 188; *G. W. Ry. Co. v. Bagge*, 15 Q. B. D. 625; 54 L. J. Q. B. 599.

In *Dickenson v. Lano* (action for freight), *supra*, Blackburn, J., said: "*Primâ facie*, the contract is made with the owner of the

goods. . . . But if the carrier made a bargain with anyone else, as the party who bought the goods, clearly that bargain would bind." CH. VIII.  
ART. 78.

But a carrier may waive his right to recover his charges from the person primarily liable by giving credit to another. See *Tobin v. Crawford*, 9 M. & W. 716; 12 L. J. Ex. 490.

#### 4. *Recovery of Money paid on account of the Goods.*

**76.** Where goods necessarily pass through the hands of several distinct carriers, the last carrier is entitled to be reimbursed any money he may have paid out to the carrier from whom he received the goods, and who has carried them during the earlier part of the journey. See *The Hibernian*, [1907] P. 277.

**77.** A carrier is entitled to recover expenses necessarily incurred by him in the preservation of the goods from extraordinary perils, not properly arising from his ordinary duty. *G. N. Ry. Co. v. Swaffield*, L. R. 9 Ex. 132; 43 L. J. Ex. 89; *Coldman v. Hill*, [1919] 1 K. B. at p. 456; 88 L. J. K. B. 491; and see *Notara v. Henderson*, L. R. 7 Q. B. at p. 235; 41 L. J. Q. B. 158.

As if a sudden flood or storm should do injury to the goods, and some immediate expense for their preservation should become necessary, the carrier would be bound to incur it, and would be entitled to call upon the owner for reimbursement. See Story on Bailments, 9th ed. at p. 572.

5. *Lien* (a).

CH. VIII.  
Art. 78.

78. A common carrier has a particular or specific lien at common law, which empowers him to retain goods carried by him until the price of the carriage of those particular goods has been paid, unless he has entered into some special contract by which that lien is waived. *Skinner v. Upshaw*, 2 Ld. Raym. 752.

A common carrier's claim to a general lien can be supported only by proof of general usage, or special agreement, express or implied. *Rushforth v. Hadfield*, 6 East, 519; 7 East, 224; *Wright v. Snell*, 5 B. & Ald. 350.

The lien of a common carrier being a common law lien, he cannot, in the absence of express contract or usage from which a contract may be implied, detain the goods of his employers for anything beyond the price of the carriage of the goods so conveyed: *Skinner v. Upshaw*, Ld. Raym. 752, such as for charges for booking or warehouse room. *Lambert v. Robinson*, 1 Esp. 119; *G. N. Ry. Co. v. Swaffield*, L. R. 9 Ex. 132, at p. 137, per Pollock, B.

In no case can the carrier stop the goods at the commencement of the journey and hold them there under a claim of lien. Per Martin, B., in *Wiltshire Iron Co. v. G. W. Ry. Co.*, L. R. 6 Q. B. 776, 780.

In England the right of lien exists whether the goods are the property of the person who has tendered them for conveyance, or the property of third parties from whom they have been fraudulently taken or stolen. *Exeter Carriers' Case*, 2 Ld. Raym. 867.

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(a) As to the lien of railway companies, see *post*, p. 203.

A receiver for debenture holders has no power without the leave of the Court to enter into an agreement giving a carrier a general lien for unsatisfied freight on goods shipped by him as receiver and manager. *Whinney v. Moss Steamship Co.*, [1910] 2 K. B. 813; 79 L. J. K. B. 1038.

Ch. VIII.  
Art. VI.

79. A particular lien for the special freight and charges due to a carrier in respect of particular goods has priority over a vendor's right of *stoppage in transitu*, but a general contractual lien for all outstanding debts due to the carrier by the owner of such goods is subject to the vendor's said right unless there is a clear agreement on his part to postpone it. *United States Steel Products Co. v. G. W. Ry. Co.*, [1916] 1 A. C. 189; 85 L. J. K. B. 1; *Oppenheim v. Russell*, 3 Bos. & P. 42.

As to the facts of the first of these cases, see *post*, p. 104.

In *Oppenheim v. Russell*, *supra*, it was held that where a carrier has by usage a lien for his general balance it is subject to the vendor's right of stoppage.

A carrier who, by the custom of a particular trade, is to be paid for the carriage of goods by the consignor, has no right to retain them against the consignee who has paid for them, in respect of a general balance due for the carriage of other goods of the same sort sent by the consignor. *Butler v. Woolcott*, 2 Bos. & P. 64.

80. The existence of a special contract between a common carrier and his employer, regarding the services to be performed, and the compensation to be paid, does not deprive the former of his lien, unless there is something in that contract inconsistent with

CH. VIII.  
ART. 80.  
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such lien. Per Lord Ellenborough, in *Chase v. Westmore*, 5 M. & S. 180.

Credit given, by the contract, to the employer for the price of carriage, beyond the time when the goods carried are to be delivered and placed out of the carrier's control, is inconsistent with a lien. *Raitt v. Mitchell*, 4 Camp. 146; *Crawshay v. Homfray*, 4 B. & A. 50.

This principle has been extended to cases where there was no express agreement to give credit, but where, by the usage of trade, a credit might be claimed. *Ibid.*

81. Where goods are consigned to an individual, or to his order, the carrier has a right to consider him as the owner of the goods for the purpose of delivery, but not for the collateral purpose of creating a lien on the goods as against the owner, in respect of a general balance due from the consignee. *Wright v. Snell*, 5 B. & A. 350.

In that case a carrier had given notice that all goods would be subject to a lien, not only for the freight of the particular goods, but also for any general balance due from their respective owners, and goods were sent to the order of J. S., a factor. The Court held that the carrier had not, as against the real owner, any lien for the balance due from J. S.

82. A carrier by delivering part of the goods does not abandon his lien upon the rest for his unpaid carriage. He is bound to deliver up to the extent of the freight which has been paid; but the moment that he has delivered enough to satisfy that, he has his lien upon the whole of the remainder of the goods for the unpaid balance of the carriage. *Ex parte Cooper*, 11 Ch. D. 68; 48 L. J. Bkcy. 49.

But if the cargo consisted of the different parts of one entire machine, *semble*, delivery of an essential part of the machine would operate as a delivery of the whole. *Ibid.* Ch. VIII.  
Art. 68.

But if the carrier loses the possession by fraud, the lien revives if possession is recovered. *Wallace v. Woodgate*, Ry. & M. 193; 1 C. & P. 575.

A delivery of the goods to a common carrier for conveyance to the buyer is such a delivery of actual possession to the buyer through his agent, the carrier, as suffices to put an end to the vendor's lien. Sale of Goods Act, 1893, s. 43.

Sect. 494 of the Merchant Shipping Act, 1894, enables a shipowner to deposit goods in a warehouse, and also to retain his lien for freight or other charges on such goods upon giving written notice to that effect to the warehouseman. But where shipowners placed the goods in a warehouse with written instructions to the warehouseman to hold the same for them and not to deliver the goods to anyone without their written instructions accompanied by their release for freight, it was held that the shipowners had not placed the goods in the warehouse under the provisions of the above section, and that therefore the owners of the goods were not entitled to delivery upon depositing the amount of the freight with the warehouseman under the provisions of sect. 495 (2) of the above Act. See *Dennis & Sons v. Cork Steamship Co.*, [1913] 2 K. B. 393.

**83.** A lien does not authorize the carrier to sell the goods over which the lien extends. See *Mulliner v. Florence*, 3 Q. B. D. 484; 47 L. J. Q. B. 700.

If the goods are sold, the lien is waived, and the seller is liable for the value of the goods, and cannot set off the amount of his lien. *Ibid.*

But where a cow, which was being conveyed by a railway

CH. VIII. company on a journey involving sea transit, was accidentally and  
Art. 89. without default on the company's part killed during the sea passage, and the carcass not being claimed by the consignor's agent, was sold by the company to the best advantage, it was held by the Irish Courts that such sale was not a wrongful conversion, and that the company was not liable for damages on a counter-claim for trover. *L. & N. W. Ry. Co. v. Hughes*, 26 L. R. Ir. 165.

84. A carrier is not entitled to make any charge for warehousing the goods, during such time as he may be retaining them as a lien for his carriage. *Somes v. British Empire Shipping Co.*, 8 H. L. C. 338; E. B. & E. 353.

In that case Lord Campbell, C. J., said at E. B. & E. p. 366: "The right of detaining goods, on which there is a lien, is a remedy for the party aggrieved which is to be enforced by his own act; and where such a remedy is permitted, the common law does not seem generally to give him the costs of enforcing it."

A refusal by the consignee to pay the charges for carriage does not entitle the carrier to return the goods to the starting point immediately. It is the duty of a carrier, if he retain goods in the exercise of his lien on the refusal of the consignee to pay for the carriage, to deal with them in a reasonable manner and keep them in a reasonable place. *Crouch v. G. W. Ry. Co.*, 27 L. J. Ex. 345.

85. A carrier may exercise a contractual right of general lien over goods stored on land belonging to him, although that land is let to the owner of the goods. *G. E. Ry. Co. v. Lord's Trustee*, [1909] A. C. 109; 78 L. J. K. B. 160.

In that case a railway company by a "ledger agreement"

opened a credit account with a coal merchant for the carriage of coal, and the coal merchant agreed therein that the company should have a continuous lien upon the coal conveyed on their lines or being on ground rented of the company for all charges due to them. By a separate agreement the company let to the merchant certain ground in the railway yard for stacking and dealing with his coal. The company had the keys of the yard gates and kept them locked from time to time. It was held that the coal was still subject to the company's lien. The coal had not passed "out of the grasp of the company."

Ch. VIII.  
Art. 84.

It was also held in that case that the ledger agreement giving the lien did not require registration as a bill of sale.

See *post*, p. 206.



## CHAPTER IX.

### THE RIGHTS OF THE SELLER AND BUYER OF THE GOODS IN RELATION TO THEIR CONVEYANCE BY A CARRIER.

#### 1. *Generally.*

sp. IX.  
t. 88.

86. "Where in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is *primâ facie* deemed to be a delivery of goods to the buyer." Sale of Goods Act, 1893, s. 32 (1).

By sect. 29 (1) of the above Act, the place of delivery, apart from any contract, express or implied, is the seller's place of business, if he have one, and if not, his residence: provided that, if the contract is for the sale of specific goods, which are known to the parties when the contract is made to be in some other place, then that place is the place of delivery.

"As soon as the goods are delivered into the hands of the carrier he becomes responsible to the purchaser to whom they are consigned, and there is an executed delivery as well as a transfer of the ownership and risk." Addison on Contracts, 11th ed. p. 604.

In such cases the carrier is, in contemplation of law, the bailee of the person *to* whom, not *by* whom, the goods are sent, the latter in employing the carrier being considered as an agent of the former for that purpose. If the seller, however, expressly agrees

to deliver *at a certain place*, he will be assumed to undertake the risks of carriage to that place. *Dunlop v. Lambert*, 6 Cl. & F. at p. 620. Chap. IX.  
Art. 98.

It must not be forgotten that the carrier only represents the buyer for the purpose of *receiving*, not *accepting*, the goods. See next Article.

"If the reason why the delivery of the goods to the carrier *primâ facie* appropriates them to the contract of sale, and vests the property in the buyer, is that the carrier is an agent of the buyer, having authority to receive the goods for him, it follows that when the carrier receives the goods under a contract with the seller, by which he agrees to keep possession of the goods subject to the seller's orders, the property is not transferred: for in such a case it is clear that the carrier does not receive the goods as an agent for the buyer." See Blackburn on Contract of Sale, 3rd ed. p. 148.

**87.** The receipt of goods by a carrier, although appointed by the buyer, does not constitute an acceptance within sect. 4 of the Sale of Goods Act, 1893; the carrier being only an agent for the purpose of receiving and carrying the goods for his employer. *Hanson v. Arncliffe*, 5 B. & A. 557; *Hart v. Bush*, E. B. & E. 494; 27 L. J. Q. B. 271.

A buyer may by his conduct convert the carrier into an agent for custody and acceptance on his behalf. *Bushel v. Wheeler*, 15 Q. B. 442.

"Acceptance" for the purpose of sect. 4 of the Sale of Goods Act, 1893, which replaced sect. 17 of the Statute of Frauds (29 Car. 2, c. 3) (numbered 16 in the Revised Statutes, and repealed by sect. 60 and Schedule of the Sale of Goods Act, 1893), is defined by sect. 4 (3) of that Act as having been effected "when the buyer does any act in relation to the goods which recognises

**Chap. IX.** a pre-existing contract of sale, whether there be an acceptance in  
**Art. 67.** performance of the contract or not.

It is to be observed that while the carrier is not an agent for the purpose of accepting goods, so as to satisfy sect. 4 of the Sale of Goods Act, 1893, the giving instructions by the buyer to an agent to collect goods may amount to an acceptance. Benjamin on Sales, 6th ed. p. 238.

The fact that the buyer has directed the mode of conveyance does not render a delivery to the carrier appointed by him equivalent to acceptance by him. *Astey v. Emery*, 4 M. & S. 262; *Norman v. Phillips*, 14 M. & W. 277; 14 L. J. Ex. 306.

Delivery to an agent for custody on behalf of the buyer puts an end to the transit for the purpose of determining the relation between seller and buyer, and it will not be revived by the subsequent despatch of the goods to a further destination. *Dixon v. Baldwin*, 5 East, 175; *Kendal v. Marshall Stevens*, 11 Q. B. D. 356; 52 L. J. Q. B. 313.

Delivery at a railway station named by the buyer ends the transit, but is not evidence of acceptance. *Smith v. Hudson*, 34 L. J. Q. B. 145.

88. "Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages." Sale of Goods Act, 1893, s. 32 (2).

In *Clarke v. Hutchins*, 14 East, 475, the vendor, in delivering goods to a trading vessel, neglected to apprise the carrier that

Chap. III.  
Art. 22.

the value of the goods exceeded 5l., although the carriers had published, and it was notorious in the place of shipment, that they would not be answerable for any package above that amount unless entered and paid for as such. The package was lost, and on the vendor's action for goods sold and delivered, it was held that the seller had not made a delivery of the goods; not having "put them in such a course of conveyance as that, in case of a loss, the defendant might have his indemnity against the carriers." See also *Buckman v. Levi*, 3 Camp. 414.

The duty of a seller of goods, and of a carrier acting as his agent, is to deliver the goods at the place indicated by the buyer, and to take all proper care to see that no unauthorised person receives them. If under these circumstances delivery is made to an apparently respectable person, who then steals the goods, the loss will fall on the buyer, and not on the seller or carrier. *Galbraith and Grant, Ltd. v. Block*, [1922] 2 K. B. 155; 91 L. J. K. B. 649.

Where a seller sells goods under a c.i.f. contract but does not insure them for the transit, there is no delivery in accordance with the contract, although they arrive safely, and the buyer is not bound to accept or pay for them. *Orient Co. v. Brekke and Howlid*, [1913] 1 K. B. 531; 82 L. J. K. B. 427.

On the other hand, under a c.i.f. contract tender of the bill of lading and insurance policy is equivalent to a tender of the goods entitling the seller to immediate payment, although they have not been physically delivered, but the buyer retains the right to reject if the goods are found not to be in conformity with the contract. See the judgment of Kennedy, L. J., in *Biddell Brothers v. Clemens Horst Co.*, [1911] 1 K. B. at p. 952; adopted by the House of Lords in the same case, [1912] A. C. 18; 81 L. J. K. B. 42.

89. "Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to

**Chap. IX**  
**Art. 89.**

insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit." Sale of Goods Act, 1893, s. 32 (3).

Historically the rule laid down in the above sub-section was before 1882 a rule of Scots law only, and had no counterpart in English law. See judgment of Hamilton, J. J., in *Wimble v. Rosenberg*, [1913] 3 K. B. at p. 762. In that case the Court of Appeal by a majority (Hamilton, L. J., dissenting) held that this sub-section applied to a contract for the sale of goods f.o.b.

90. In the case of goods the subject-matter of a contract of sale being lost or damaged, and in the absence of any special contract between the carrier and the seller or buyer as the case may be, the proper person to sue the carrier is the person in whom the property in such goods is vested during transit. *Dawes v. Peck*, 8 T. R. 330; *Frecman v. Birch*, 1 N. & M. 420; *Coats v. Chaplin*, 3 Q. B. 483; *Coombs v. Bristol and Exeter Ry. Co.*, 3 H. & N. 510; *Murphy v. M. G. W. Ry. Co.*, [1903] 2 I. R. 5. See also *John Wallis & Sons v. G. N. Ry. Co. (Ireland)*, 12 Ry. & Can. Ca. 38.

Although, generally speaking, where there is a delivery to a carrier to deliver to a consignee, he (the consignee) is the proper person to bring the action against the carrier should the goods be lost; yet if the consignor made a special contract with the carrier, and the carrier agreed to take the goods from him and to deliver them to any particular person at any particular place, the special contract supersedes the necessity of showing the ownership in the goods; and the consignor, the person making

the contract with the carrier, may maintain the action though the goods may be the goods of the consignee. Per Lord Cotton-  
Chap. IX.  
Art. 50.  
 ham, L. C., in *Dunlop v. Lambert*, 6 Cl. & F. at p. 626.

The carrier must be careful to ascertain that the person to whom he pays compensation is the person with whom he actually contracted, as a previous payment to another, even though he be the apparent contractor, is no defence to a claim by the real party to the contract. *Coombs v. Bristol and Exeter Ry. Co.*, 3 H. & N. 510.

The question as to when the property in goods is transferred from the buyer to the seller depends upon the terms of the contract between them. See the judgment of Blackburn, J., in *Calcutta Co. v. De Mattos*, 32 L. J. Q. B. 322.

In the absence of any special contract the rules laid down by the Sale of Goods Act, 1893 (ss. 16 to 20 inclusive), will apply.

If the seller in delivering to the carrier is acting merely as agent for the buyer, he has no right of action against the carrier for loss or damage. *Davies v. Peck*, 8 T. R. 330.

It is sufficient, however, if the plaintiff have a special property, such as that of a bailee, in the goods. *Freeman v. Birch*, 1 N. & M. 420.

Where goods are consigned by the seller to the buyer with the consent and by the authority of the latter upon the understanding that freight is to be paid by the buyer, the inference is that the carrier's contract is with the buyer. See *Cork Distilleries Co. v. Gl. S. & W. Ry. Co. (Ireland)*, L. R. 7 H. L. at p. 277.

Of the cases cited in support of the above article, two, namely, *Coats v. Chaplin* and *Coombs v. Bristol and Exeter Ry. Co.*, were decided in accordance with the rule that where there was a failure to comply with sect. 17 of the Statute of Frauds, no property passed to the buyer. That section has been repealed by sect. 60 and Schedule of the Sale of Goods Act, 1893, and sect. 4 of the latter Act has been substituted in its place. The wording of the new section is not, however, the same as that of the repealed section; in sect. 4 of the Sale of Goods Act it is enacted that a

Chap. IX.  
Art. 80.

contract "shall not be enforceable by action," while the repealed sect. 17 of the Statute of Frauds enacted that "no contract shall be allowed to be good."

The change in language does not affect the principle as above stated, but the question has arisen as to whether a failure to comply with sect. 4 of the Sale of Goods Act affects the transfer of the property in goods, which are the subject of a contract of sale. Bigham, J., in *Taylor v. G. E. Ry. Co.*, [1901] 1 Q. B. 774; 70 L. J. K. B. 499, without deciding the point, appears to have thought that the non-compliance with the provisions of sect. 4 of the Sale of Goods Act, 1893, would not invalidate a contract, and that all the legal consequences of a contract would follow thereon save that it could not be enforced by action. If this view be correct, a buyer will now be able to maintain an action against a carrier even though there has not been a compliance with sect. 4 of the Sale of Goods Act, 1893, provided that the other conditions of that Act as to the transfer of the property in the goods are present, and there is no special contract between the seller and the carrier.

91. "Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit." Sale of Goods Act, 1893, s. 33.

"A manufacturer who contracts to deliver a manufactured article at a distant place, must stand the risk of any extraordinary or unusual deterioration, but we think that the vendee is bound to accept the article if only deteriorated to the extent that it is necessarily subject to in its course of transit from one place to the other." Per Alderson, B., in *Bull v. Robinson*, 10 Ex. at p. 346.

In the case of perishable goods there is an implied warranty that they shall arrive in a fit state for the purpose for which they are intended to be used. *Beer v. Walker*, 46 L. J. C. P. 677. Chap. IX.  
Art. 81.

By sect. 20 of the above Act, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss, which might not have occurred but for such fault.

## 2. *Stoppage in transitu.*

92. "Subject to the provisions of this Act (i.e., the Sale of Goods Act, 1893), and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law— \* \* \*

"In case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them." Sale of Goods Act, 1893, s. 39.

"Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price." Sale of Goods Act, 1893, s. 44.

This is a right which arises solely upon the *insolvency* of the buyer, and is based on the plain reason of justice and equity that one man's goods shall not be applied to the payment of another man's debts. Per Lord Northington, C., in *D'Aquila v. Lambert*, 2 Eden at p. 77.



**Imp. Ex. Art. 98.** The stoppage to be effectual must be on behalf of the vendor, in the assertion of his rights as paramount to the rights of the buyer *Wilson v. Anderton*, 1 B. & Ad. 450; *Siffken v. Wray*, 6 East, 371.

A definition of "unpaid seller" is given in sect. 38 of the Act. "A person is deemed to be insolvent within the meaning of this Act, who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he has become a notour bankrupt or not." Sale of Goods Act, 1893, s. 62 (3).

"Notour bankrupt" is a reference to Scottish Law.

"The term 'insolvent' has been repeatedly construed to apply to a person labouring under a general disability to pay his just debts in the ordinary course of trade and business." Per Willes, J., in *The Queen v. Saddlers' Co.*, 10 H. L. C. at p. 425.

"There is no necessity that the buyer should have been formally a bankrupt, if he has become insolvent. There must, of course, in all cases be great difficulty in proving that a person, who has not stopped payment, is in fact not solvent; and as the carrier obeys the stoppage *in transitu* at his peril if the consignee be in fact solvent, it would seem no unreasonable rule to require that, at the time the consignee was refused the goods, he should have evidenced his insolvency by some overt act." Blackburn on Sale, 3rd ed. p. 413.

It is sufficient for the purpose of stoppage *in transitu* to show that the buyer was in such circumstances as not to be able to meet his engagements. *Schotsmans v. Lanc. and York. Ry. Co.*, L. R. 1 Eq. at p. 360.

**93.** "Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee or custodier for the purpose of transmission to the buyer, until the buyer,

or his agent in that behalf, takes delivery of them from such carrier or other bailee or custodier." Sale of Goods Act, 1893, s. 45 (1). Chap. IX.  
Art. 30.

The transit continues where it has been caused either by the terms of the contract or by the directions of the purchaser to the vendor. See judgment of Lord Esher in *Bethell v. Clark*, 20 Q. B. D. at p. 617; 57 L. J. Q. B. 302.

The right of the seller is not affected by the fact that the carrier has been appointed by the buyer. *Bethell v. Clark*, 20 Q. B. D. 615; 57 L. J. Q. B. 302; *Kemp v. Ismay*, 14 Com. Cas. 202.

But a delivery to the buyer's own servant is a delivery into the buyer's actual possession so as to defeat the seller's right of stoppage *in transitu*, unless the seller makes it clear, as by giving a bill of lading to his own order, that the delivery is made to the buyer's servant as an agent for carriage, and not as an agent to receive possession on behalf of the buyer. See *Turner v. Trustees of Liverpool Docks*, 6 Ex. 543; 20 L. J. Ex. 393.

If the goods are in the custody of the carrier, as a warehouseman and not as a carrier, the unpaid vendor has no right to stop them. *Wentworth v. Outhwaite*, 12 L. J. Ex. 172; 10 M. & W. 436; *Smith v. Hudson*, 34 L. J. Q. B. 145.

**94.** "If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end." Sale of Goods Act, 1893, s. 45 (2). See *L. & N. W. Ry. Co. v. Bartlett*, 7 H. & N. 400; 31 L. J. Ex. 92.

**95.** "If, after the arrival of the goods at the appointed destination, the carrier or other bailee or custodier acknowledges to the buyer, or his agent, that he holds the goods on his behalf and continues in possession of them as bailee or custodier for the buyer, or his agent, the transit is at an end, and it is im-

Chap. IX.  
Art. 98.

material that a further destination of the goods may have been indicated by the buyer." Sale of Goods Act, 1893, s. 45 (3).

"Appointed destination" means the place to which the goods are to be consigned under the contract. As above stated the transit is not ended by arrival at a given place, but by delivery into the actual or constructive possession of the buyer; and see *Kendal v. Marshall, Stevens & Co.*, 11 Q. B. D. 356; 52 L. J. Q. B. 313. In this case Bowen, L. J., said: "Goods are in transit until they reach the actual or constructive possession of the consignee. The transit is at an end when the vendee takes actual possession of them: it is at an end when some person acting on behalf of the vendee receives them from a carrier. . . . The test to be applied, when delivery to the vendee is spoken of, is not what is thought, but what is done." . . .

The fact that the carrier holds goods as a warehouseman does not necessarily destroy his right to retain them until his lien for his charges for carriage is satisfied. The question is one of intention and of what arrangement has been made between the parties. See Lord Blackburn's judgment in *Kemp v. Falk*, 7 App. Cas. at p. 584.

The vendor's right to stop *in transitu* cannot be defeated by a usage for carriers to retain goods as a lien for a general balance of accounts between them and their consignees. *Oppenheim v. Russell*, 3 Bos. & Pul. 42; *Richardson v. Goss*, 3 Bos. & Pul. 119.

96. "If the goods are rejected by the buyer, and the carrier or other bailee or custodier continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back." Sale of Goods Act, 1893, s. 45 (4).

See *Bolton v. L. & Y. Ry. Co.*, L. R. 1 C. P. 431; 35 L. J. C. P. 137; *James v. Griffin*, 2 M. & W. 623.

97. "When goods are delivered to a ship chartered by the buyer it is a question depending upon the circumstances of the particular case, whether they are in possession of the master as a carrier, or as agent to the buyer." Sale of Goods Act, 1893, s. 45 (5).

See *Berndtson v. Strang*, L. R. 4 Eq. 481; 3 Ch. App. 588.

98. "Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end." Sale of Goods Act, 1893, s. 45 (6).

"The proper inference from this provision is that, if the carrier rightfully refuses delivery, the transit is not deemed to be at an end." Benjamin on Sale, 6th ed. p. 1039.

As to the principle, see *Bird v. Brown*, 4 Ex. at p. 797.

99. "Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods." Sale of Goods Act, 1893, s. 45 (7).

In the absence of evidence to the contrary it must, as a general rule, be assumed that the delivery of part of a cargo is intended only to operate as a delivery of that part. See *Ex parte Cooper*, 11 Ch. D. 68; 48 L. J. Bk. 49.

100. "The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods, or by giving notice of his claim to the

Chap. IX.  
Art. 100.

carrier or other bailee or custodian in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer." Sale of Goods Act, 1893, s. 46 (1).

No particular form is necessary.

The above section does not state that when notice has been given to the principal, it is his duty to communicate with his agent in possession of the goods, but the inference would appear to be that he ought to do so. This was the view taken by Lord Blackburn in *Kemp v. Falk*, 7 App. Cas. at p. 585.

In *Phelps v. Comber*, 29 Ch. D. 813, it was doubted if a notice to the consignees was sufficient.

The rights of an unpaid seller who exercises his right of stoppage *in transitu* and of the carrier of the goods have been considered in the two recent cases of the *United States Steel Products Co. v. G. W. Ry. Co.*, [1916] 1 A. C. 189; 85 L. J. K. B. 1; and *Booth Steamship Co. v. Cargo Fleet Iron Co.*, [1916] 2 K. B. 570; 115 L. T. 199.

In the former case the sellers, an American company, authorised their agents on the arrival of goods in England to deliver the goods to a railway company for carriage to the buyers upon the terms of a consignment note, which contained a condition that all goods delivered to the company would be received and held by them subject to a lien for money due to them for the carriage of and other charges upon such goods, and also to a general lien for any moneys due to them from the owners of such goods upon any account. While the goods were in transit on the railway unpaid, the sellers, being unpaid and having received in-

Chap. XX.  
Art. 149.

formation that the buyers were insolvent, gave notice of stoppage *in transitu* to the railway company. In the meantime the buyers had obtained possession of the goods by the indorsement and delivery of the bill of lading. They were indebted to the railway company in the sum of 1,170*l.* on a general account. Under the terms in the consignment note the railway company claimed that they had a general lien as against the vendors in respect of their debt in priority to the seller's right of stoppage *in transitu*, but their claim failed.

Lord Buckmaster, L. C., in the course of his judgment at p. 295, [1916] 1 A. C., thus states the law: "Apart from any express contract, it is clear that a carrier of goods, whether by land or sea, has a lien on the goods for their freight, but this right, which arises from the common law, is confined to the carrier's charges payable on the carriage of the particular goods. Such a lien prevails against the rights of the vendors as well as those of the consignees. On the other hand, a general lien, that is, a right to retain the goods for other freights due upon other transactions, can only arise by express contract or from general usage, and such a lien, apart from contract, cannot affect the right of the consignor."

In *Booth Steamship Co. v. Cargo Fleet Iron Co.*, [1916] 2 K. B. 570, the defendants were the sellers of goods, and acting upon the instructions of the buyers, delivered the goods to be carried by the plaintiffs' ships to Brazil. During the transit, being still unpaid and having notice of the buyer's insolvency, the defendants stopped the goods *in transitu*. They did not, however, take actual possession of the goods on arrival, and refused to pay the freight charges. They were held liable in damages for breach of their obligation created by their notice of stoppage *in transitu*, namely, to take actual possession of the goods on arrival and to discharge the plaintiffs' lien for freight. The measure of damages was held to be the equivalent of the proper freight.

## THE LAW OF CARRIERS BY LAND.

The following propositions were laid down by the Court of Appeal:—

1. Where goods are stopped *in transitu* before they reach their specified ultimate destination by notice from an unpaid vendor, the carrier is bound to act upon the notice by delivering the goods to, or according to the directions of, the seller, and if he fails to do so he is liable to an action by the vendor for wrongful conversion.

2. The seller on his part (although he is not a party to the contract of affreightment) is bound to take the goods or give directions for their delivery on arrival, and to discharge the carrier's lien for freight, and if he refuses to perform this obligation he is liable in damages to the carrier for the amount of the freight.

3. If a seller who has stopped goods *in transitu* prevents them from being carried on to their specified ultimate destination, he is liable for the freight to such ultimate destination.

4. The effect of stoppage *in transitu* is not to rescind the contract between the carrier and the buyer, or to vest the property in the goods in the unpaid seller.

## PART II.

### CARRIAGE OF MERCHANDISE BY RAILWAY.

*In this Part of the Book the special position of railway companies, as distinguished from other carriers, is discussed; subject thereto the propositions set out in Part I. will apply to railway companies generally along with other carriers.*

## CHAPTER X.

### DELIVERY TO A RAILWAY COMPANY.

101. A railway company must accept for carriage all goods which they profess to carry as common carriers. **Chap. X.  
Art. 101.**

As to the rights and liabilities of common carriers, see *ante*, Chapters III. to IX.

"Whether railway companies are common carriers of particular classes of goods depends upon what they do, or profess to do, with respect to such goods." Per Lindley, L. J., in *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. at p. 185; 56 L. J. Q. B. 111.

The test is whether they profess to carry the particular goods for everybody. See judgment of Scrutton, L. J., in *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, [1922] 2 K. B. at p. 765; 91 L. J. K. B. 807. In most of the cases in which this point has arisen, the railway company did not profess to carry at all, or had given reasonably clear notice that they would not carry unless



Chap. X.  
Art. 101.

certain conditions were complied with. Thus in *Johnson v. Midland Ry. Co.*, 4 Ex. 367; 18 L. J. Ex. 366, the company had never carried and did not profess to carry the particular goods between the two places there in question. In *Sutcliffe v. G. W. Ry. Co.*, [1910] 1 K. B. 478; 79 L. J. K. B. 437, the company gave notice on their consignment note that they were not and would not be carriers of certain damageable goods except when properly protected by packing, but gave the trader the option of forwarding such goods without any reduction of rate at owner's risk, i.e., that the company were not to be liable for loss or injury except upon proof that they arose from wilful misconduct on the part of their servants. The Court of Appeal differed as to whether the company under these circumstances were common carriers, and by a majority gave judgment for the railway company on another point.

In *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. 176; 56 L. J. Q. B. 111, the company gave the following notice: "The company are not and will not be common carriers of dogs, nor will they receive dogs for conveyance except upon the terms," &c. The Court of Appeal held that the company were not common carriers of dogs. If it be right to say that a common carrier is one who professes to carry goods for everybody, the important part of the above notice is the statement that the company would not receive dogs except upon certain terms and not the statement that the company were not common carriers of dogs. If a carrier professes to carry for all persons by way of a public employment he is in fact a common carrier, and it is submitted that he will not cease to be one merely by giving notice to the contrary. The only purpose of such a notice presumably would be to limit his common law liability, and it would be of no effect under sect. 4 of the Carriers Act, 1830, *ante*, p. 64, unless brought home to the consignor.

A railway company carrying from a place within to a place without the realm, are subject to the same liabilities at common law as a railway company who carry only within the realm.

*Crouch v. L. & N. W. Ry. Co.*, 14 C. B. 255; 23 L. J. C. P. 73. Chap. X.  
Art. 131.

Sect. 86 of the Railways Clauses Act, 1845, authorises a railway company "to carry and convey upon the railway all such passengers and goods as shall be offered to them," but this does not compel a company to accept goods for carriage. See *Johnson v. Mid. Ry. Co.*, 4 Ex. 367; 18 L. J. Ex. 366; *Oxlade v. N. E. Ry. Co.*, 1 C. B. N. S. at p. 498; 26 L. J. C. P. at p. 135.

Sect. 6 of the Cheap Trains Act, 1883, requires railway companies to carry officers and men of the Navy and Army on the conditions therein stated.

Sect. 18 of the Regulation of Railways Act, 1873, requires railway companies to carry mails.

**102.** A railway company who hold themselves out as common carriers of any class of goods cannot under the common law impose unreasonable conditions as to the carriage of such goods. *Garton v. Bristol and Exeter Ry. Co.*, 1 B. & S. 112; 30 L. J. Q. B. 273. If they carry under special conditions they will, subject thereto, retain their character as common carriers unless that character is obliterated by such conditions. *Barendale v. G. E. Ry. Co.*, L. R. 4 Q. B. 244; 38 L. J. Q. B. 137; *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, [1922] 2 K. B. 742; 91 L. J. K. B. 807.

The conditions of carriage by railway have been settled by the Rates Tribunal under sect. 43 of the Railways Act, 1921, and by sub-sect. 2 of that section are deemed to be reasonable. See Appendix, where these conditions are set out in full.

By sect. 44 (3) of the above a railway company and a trader are still at liberty to agree in writing to any conditions they think fit. See *post*, Chapter XI., where the subject is discussed at length.

Chap. X.  
Art. 103.

In *Smith & Son v. L. & N. W. Ry. Co.*, 88 L. J. K. B. 742, the traders claimed that the company as common carriers were bound to carry unconditionally, while the company insisted on the use of their standard "company's risk" or "owner's risk" consignment note. Roche, J., held that there was no evidence that the company were common carriers of the goods in question, and added that they had given the plainest intimation that they would not carry except on the terms which they were then laying down, and that this was a revocation of any intention to carry as common carriers. If this decision involves the assumption that a carrier ceases to be a common carrier because he has made a contract which in some respects varies his liability as such, it has been overruled by the decision of the Court of Appeal in the *L. E. P. Transport Case*, *supra*.

**103.** Every railway company and railway and canal company shall according to their respective powers afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies. Railway and Canal Traffic Act, 1854, s. 2.

Sect. 75 (1) of the Railways Act, 1921, requires any company amalgamated under that Act to afford any other amalgamated company all reasonable facilities for the convenient working, forwarding and conveyance of through traffic, so as to satisfy the reasonable requirements of the public for the reception, forwarding and delivery of such traffic.

"Traffic" includes not only passengers and their luggage and goods, animals, and other things conveyed by any railway company, but also carriages, wagons, trucks, and vehicles of every description adapted for running on the railway. "Railway" includes stations. See sect. 1 of the above Traffic Act, 1854. But railway companies are not under a statutory obligation to

carry all goods. The matter is controlled by the word "reasonable" in the above section. Thus they can refuse to carry articles of such length as cannot travel safely on the railway. See judgment of Buckley, L. J., in *Sutcliffe v. G. W. Ry. Co.*, [1910] 1 K. B. at p. 494; 79 L. J. K. B. 437. Nor are railway companies bound to carry dangerous goods. See *post*, p. 113.

Chap. II.  
Art. 100.

"This Act (*i.e.*, the Traffic Act, 1854) imposes on railway companies the duty to afford reasonable facilities for carrying all passengers, goods and animals. There may be an exception in the case of specially dangerous goods (see the Railways Clauses Consolidation Act, 1845, s. 105), but these are not now in question. The duty thus imposed on railway companies is inconsistent with their right to refuse to carry any particular class of goods or animals which they have facilities for carrying, and is inconsistent with their right to refuse to carry such goods or animals except upon terms which are unreasonable. . . . The important point is that railway companies are bound to carry goods and animals which they have facilities for carrying. It would, however, be a mistake to suppose that railway companies are bound to carry as common carriers everything which they can be required to carry under the provisions of the Railway and Canal Traffic Act, 1854." Per Lindley, L. J., in *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. at p. 184; 56 L. J. Q. B. 111.

As to reasonable facilities, see Chapter XXI., *post*, p. 312.

It has not been decided under the Railway and Canal Traffic Act, 1854, how far a railway company are bound to provide extra train accommodation if their ordinary trains be full. It seems that a railway company should take precautions to prepare for additional traffic which they might reasonably anticipate. *Wallace v. Gt. South. & West. Ry. Co.*, 17 W. R. 464.

In that case the plaintiff, on the 10th of September, delivered machinery to the railway company at D., addressed to and to be delivered at the Agricultural Show yard at W. In the ordinary course of traffic, the machinery would have reached W. on the 11th of September. The machinery was sent from D. in due

**Chap. X.**  
**Art. 104.**

course, but when it arrived at B., a station between D. and W., the rails were in a slippery condition, and a great increase of traffic had taken place. The railway company's servants, therefore, uncoupled the trucks which contained the plaintiff's machinery, and substituted trucks containing cattle which had been left behind by a previous train. The machinery was thus delayed till a late train, and so arrived too late for the show. The railway company had taken no precaution to provide for the additional traffic, though they might have anticipated it. It was held, upon these facts, by the Irish Court of Queen's Bench, that there was a contract to deliver the machinery within a reasonable time, and that through the default of the railway company it had not been so delivered.

A railway company are not bound to provide booking offices for traffic at places off their railway, nor to arrange for the conveyance by road of goods between such places to the nearest station on their railway. *Dublin & Meath Ry. Co. v. Midland Gt. Western of Ireland Ry. Co.*, 3 Ry. & Can. Ca. 379.

With regard to fixing a time for the reception of goods, Williams, J., in *Garton v. Bristol & Exeter Ry. Co.*, 28 L. J. C. P. at p. 310, said: "There is no reason why the railway company may not prescribe a certain hour, after which they will not receive goods to go by the next train."

Where a train was advertised to leave at eleven o'clock, and in fact left at eight minutes past eleven, and goods marked "perishable" arrived at the station at eleven, or one minute past the hour, and were booked and on the platform when the train left, it was held that the railway company were justified in forwarding them by the next train. *Nicholls v. N. E. Ry. Co.*, 59 L. T. 137.

**104.** A railway company shall not be under any obligation to carry damageable goods not properly protected by packing. Railways Act, 1921, s. 44 (2).

This restates the common law rule (see *ante*, p. 30) that a common carrier is not bound to carry goods which are tendered to him for carriage without a proper protection of packing. *Munster v. S. E. Ry. Co.*, 4 C. B. N. S. at p. 701; 27 L. J. C. P. 308; *Sutcliffe v. G. W. Ry. Co.*, [1910] 1 K. B. at p. 503; 79 L. J. K. B. 437. (Supp. L. Art. 106)

Sect. 43 of the Railways Act, 1921, authorises the Railway Rates Tribunal to settle (*inter alia*) the terms and conditions upon which damageable goods not properly protected by packing are to be carried, which terms and conditions when so settled shall be deemed to be reasonable, but, as above stated, this is not to impose any obligation to carry.

See Appendix, *post*, where these conditions as settled by the Tribunal are set out in full.

The consignor should give the railway company notice if the goods require special care. *Baldwin v. L. C. & D. Ry. Co.*, 9 Q. B. D. 582.

**105.** No person is entitled to carry, or to require a railway company to carry, upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any other goods which in the judgment of the company may be of a dangerous nature; and if any person send by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the bookkeeper or other servant of the company with whom the same are left, at the time of so sending, he shall forfeit to the company 20*l.* for every such offence. It is lawful for the railway company to refuse to take any parcel that they may suspect to contain goods of a dangerous nature,

Chap. X.  
Art. 105.

or require the same to be opened to ascertain the fact. Railways Clauses Act, 1845, s. 105.

Any question as to whether goods are dangerous goods shall be determined by the Railway Rates Tribunal. Provided that where a railway company has declared any article to be dangerous, it shall lie on the person requiring the article to be carried to show that it is not dangerous. Railways Act, 1921, s. 50 (3). Nothing contained in the last-mentioned Act shall impose any obligation on any railway company to accept dangerous goods for conveyance. *Ibid.*, s. 50 (1).

The above provision of the Railways Act, 1921, alters the law as to the determination of what are dangerous goods for the purpose of railway carriage. Under sect. 105 of the Railways Clauses Act, 1845, the question as to what were dangerous goods was left to the judgment of the railway companies, and their decision could not be challenged or overruled provided it was exercised *bonâ fide*. *N. E. Ry. Co. v. Reckitt & Sons*, 15 Ry. & Can. Ca. 137; *Midland Ry. Co. v. Brotherton*, 16 Ry. & Can. Ca. 402. Now under sect. 50 (3) of the Railways Act, 1921, the question is to be decided by the Rates Tribunal, the onus of proving that the article in question is not dangerous being on the trader.

A guilty knowledge is necessary to support a conviction under sect. 105 of the Railways Clauses Act, 1845. *Hearne v. Garton*, 28 L. J. M. C. 216.

Dangerous goods for the purpose of railway carriage are (a) explosives, or (b) non-explosives. The law with regard to explosives is still that contained in sect. 35 of the Explosives Act, 1875, and the byelaws made thereunder by the railway companies. See *post*, p. 116. These byelaws and the powers of His Majesty in Council or any Government department under

that Act are not affected by the provisions of the Railways Act, 1921, as to dangerous goods. See sect. 50 (1) of the latter Act. Chap. X.  
Art. 106.

With regard to dangerous goods other than explosives, the position under sect. 50 of the Railways Act, 1921, appears to be that the Rates Tribunal are to decide what in fact are dangerous goods, and that the railway companies are to have a free hand in making conditions and regulations as to their conveyance and storage. Finally, the railway companies are to retain their right under sect. 105 of the Railways Clauses Act, 1845, to refuse to carry dangerous goods of either class.

106. If on or after the appointed day any railway company accepts dangerous goods for conveyance, the goods shall be conveyed subject to such byelaws, regulations and conditions as the company may think fit to make in regard to the conveyance or storage thereof, and the owner or consignor of such goods shall indemnify the company from and against all loss or damage which may result to the company or to which the company may be or become liable owing to non-compliance with the before-mentioned byelaws, regulations and conditions as to such goods, and will pay full compensation for all injury to the company's servants and damage to its property so arising, unless it be proved that the injury or damage is due to the wilful misconduct of the company's servants, but subject as aforesaid the provisions of Part III. of the Railways Act, 1921, as to ordinary rates and owner's risk rates shall apply. Railways Act, 1921, s. 50 (2).

The appointed day is the date to be fixed by the Railway Rates Tribunal, when the standard charges as settled by them are to come into operation. Railways Act, 1921, s. 31, *post*, pp. 221—2.



Chap. X.  
Art. 107.

107. Every railway company, and every canal company, over whose railway or canal any gunpowder or other explosives are carried, or intended to be carried, shall, with the sanction of the Board of Trade, make byelaws for regulating the conveyance, loading and unloading of such gunpowder or other explosives on the railway or canal of the company making the byelaws. The Explosives Act, 1875, s. 35.

The byelaws adopted by the railway companies are as follows:—

“BYELAWS made with the sanction of the Board of Trade for the regulation of the loading, unloading, and conveyance of explosives on the Railways of the

Railway Company (hereinafter called the Company) made under and in pursuance of the Explosives Act, 1875 (38 Vict. chap. 17), and every other power and authority vested in the Company.

“(a.) The words and expressions used in the following byelaws shall respectively have and include the several meanings assigned to them or defined in ‘The Explosives Act, 1875,’ and in the Order of Her Majesty in Council, dated the 5th of August, 1875, made in pursuance of section 106 of the said Act, unless the subject or context otherwise requires.

“(b.) The term ‘explosive’ means and shall include and apply to every article and substance mentioned as or defined to be an explosive in and by the 3rd section of the said Act, or the said Order in Council, or any Order in Council which may hereafter be made in pursuance of the said Act.

“(c.) Where by any of these byelaws any time is prescribed or allowed for giving any notice to the company, or for the doing of any act by the company, such time shall be computed exclusively of Sunday, Christmas Day, Good Friday, and any statutory Bank Holiday.

"1. No carriage containing any explosive which the company shall by any notice or regulation for the time being in force, notify that they will not receive, forward, or carry, shall be delivered to the company for conveyance, or be brought, sent, or forwarded to or upon any railway of the company. Chap. I.  
Art. 1st.

"2. No person shall send to the company any consignment of explosive, unless he has given to the company forty-eight hours' previous notice in writing of his intention to send such consignment, and stating the true name, description and quantity of the explosive proposed to be conveyed, and his own name and address, and also the name and address of the proposed consignee, and has had an intimation in writing from the company that they are prepared to receive such consignment.

"3. Consignments of explosives shall be sent to the company's forwarding station, and shall be received by their servants, only at such times during the hours of daylight, that is to say, between sunrise and sunset, as the company may appoint; and every consignment and package containing any explosives proposed to be conveyed on any railway of the company, shall immediately on the arrival thereof at the company's station, wharf, or railway, be delivered to and be received by the company's servants authorised to receive dangerous goods, and by no other person whatsoever.

"4. No explosive shall be loaded or unloaded on the company's premises by the consignor or consignee thereof, or their servants, except between sunrise and sunset.

"5. Safety cartridges and percussion caps and safety-fuze (for blasting), may be conveyed by passenger train, provided all due precautions be taken by the sender for the prevention of accident by fire or explosion; also railway fog signals for the company's own use; but, except as aforesaid, no explosive whatever shall be conveyed by passenger train.

"6. Gunpowder, or any explosive made with gunpowder included in the 2nd division of the 6th (ammunition) class of explosives, as classified by the said Order in Council of the 5th of August, 1875, if packed in metallic cylinders of a pattern approved

**Chap. X.  
Art. 197.**

by the company, and similar in construction and security to those used by Government for the conveyance of small quantities of gunpowder by railway, may be conveyed along with ordinary goods traffic in a carriage not containing any article or substance liable to cause or communicate fire or explosion.

"7. No explosive of the 5th (fulminate) class, nor any explosive of the 6th (ammunition) class, containing its own means of ignition, nor any explosive of the 7th (firework) class, shall be conveyed in the same carriage with any explosive not of the class and division to which it belongs.

"8. There shall not be conveyed in the same carriage with any explosive, any lucifer matches, fuzes, pipe-lights, acids, naphtha, paraffin, petroleum, to which the Petroleum Act, 1871, or any Act repealing or amending the same applies, or any other volatile spirit, or substance liable to give off an inflammable vapour at a temperature below 100° Fahrenheit, or liable to spontaneous ignition, or to cause or communicate fire or explosion.

"9. On each side of every carriage containing any explosive there shall be affixed in conspicuous characters, by means of a securely attached label or otherwise, the word 'explosive,' or the name of the explosive with the word 'explosive,' except when containing gunpowder or ammunition packed in metallic cylinders as provided for in the 6th of these bye-laws; and every carriage containing explosive shall be placed as far as practicable from the engine attached to the train.

"10. Not more than five carriages containing explosive shall be loaded or unloaded at or on any railway station or wharf of the company, or be attached to or conveyed by any one train at any one time; and the quantity of explosive to be contained or loaded in any one such carriage at any one time shall not exceed 10,000 lbs. in weight: provided always that the quantity of explosive to be contained or loaded in any one such carriage, shall not exceed one ton in weight, unless the carriage shall be a covered van.

"11. If the explosive to be conveyed is not effectually protected

from accident by fire from without, by being placed in the interior of a carriage which is enclosed on all sides with wood or metal, then the explosive shall be completely covered with painted cloth, tarpaulin, or other suitable material so as to effectually protect it against communication of fire.

Chap. X.  
Art. 107.

"12. There shall not be any iron or steel in the interior of the portion of the carriage where the explosive is deposited, unless the same be covered either permanently or temporarily with leather, wood, cloth, sheet-lead, or other suitable material.

"13. When the stowing of explosive in any carriage or the loading or unloading of any explosive is undertaken by any person other than the company, all due precautions shall be taken by such person by careful stowing and loading and unloading and otherwise to prevent and secure such explosive from being brought into contact with or endangered by any other article or substance liable to cause fire or explosion.

"14. In loading or unloading any explosive, the casks and packages containing the same shall, as far as practicable, be passed from hand to hand and not rolled upon the ground, and in no case shall any such casks or packages be rolled, unless hides, cloths, or sheets have been previously laid down on the platform or ground over which the same are to be rolled. Casks or packages containing explosive shall not be thrown or dropped down, but shall be carefully deposited and stowed.

"15. No person while employed in loading, stowing in any carriage, or unloading any explosive included in classes 1, 2, 3, 4, or 5 of the classification of explosives as classified by the said Order in Council, dated August 5th, 1875, shall wear boots or shoes with steel or iron nails, steel or iron heels, or tips of any kind, or have about his person any lucifer match, explosive, or means of striking a light; and all persons employed in the loading, stowing, or unloading of any explosive shall, while such loading, stowing, or unloading is going on, abstain from smoking.

"16. While the loading, unloading, or conveyance of explosive is going on, all persons engaged in such loading, unloading, or

Chap. X.  
Art. 187.

conveyance shall observe all due precautions for the prevention of accidents by fire or explosion, and for preventing unauthorized persons having access to the explosive so being loaded, unloaded, or conveyed, and shall abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of loading, unloading, or conveyance of such explosive, or of any other article carried therewith, and for preventing any other person from committing any such act; and such other person who, after being warned, commits any such act shall be deemed to commit a breach of these byelaws.

"17. The loading or unloading of explosive into or out of any carriage, when once begun, shall be proceeded with with all due diligence until the same is completed.

"18. Packages containing any explosive must be removed by the consignee from the station, wharf, or dépôt of the company to which they have been conveyed, as soon as practicable and with all due diligence after arrival; and if not removed within twelve hours after arrival the packages and contents may be forthwith sold by the company, or otherwise disposed of as they think fit; and such packages shall in the meantime, and until such removal, sale, or disposal, be completely covered over with painted cloth, tarpaulin, or other suitable material.

"19. The company may refuse to receive, forward, carry, or allow to be brought or carried upon their railway, any carriage, or package which they suspect to be packed or sent, or to contain any article or thing packed or sent in contravention of the said Act, or of any of these byelaws or not in accordance therewith, and in case any carriage or package which the company suspect to be so packed or sent, or to contain any such article or thing as aforesaid, shall be upon any railway of the company, the company may open, or require such carriage or package to be opened, to ascertain the fact.

"20. These byelaws are supplemental to the Explosives Act, 1875; and in the event of any breach (by any act or default) of any of them, or any attempt to commit such breach, the following

penalties and consequences will be incurred and ensue; that is to say,

Chap. II.  
Art. 127

"(1) The explosive in respect of which, or being in the carriage, or train or carriages in respect of which, the offence is committed, may, unless the offence be committed by the company, be forfeited to the company.

"(2) The person committing the offence shall be liable to a penalty not exceeding 20*l.* for each offence, and to a further penalty of 10*l.* for each day during which the offence continues; and the owner of the carriage, or train of carriages in respect of which, or containing the explosive in respect of which, the offence is committed, the person in charge of such carriage, and the owner of such explosive, shall each be liable to a similar penalty, if he was a party or contributed to such offence, or neglected to supply the proper means, or to issue proper orders for the observance, or has not used due diligence to enforce the observance of these byelaws.

"21. Copies of these byelaws shall be exhibited in a conspicuous place at the stations on the company's railways, and may be obtained on application to the secretary of the company.

"22. The above byelaws (with the exception of byelaw No. 5) do not apply to small packages of percussion caps, safety cartridges, or gunpowder, carried by passengers for private use and not for sale, not exceeding in the whole for one passenger at any one time 5,000 percussion caps, and 1,000 safety cartridges in number, and 3 lbs. in weight of gunpowder, provided such gunpowder is contained in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping.

#### NOTICE.

"The company hereby give notice that they are not common carriers of explosives, and do not undertake the carriage of any explosive except on special conditions signed by the sender

Chap. X. thereof, or by the person delivering the same to the company  
Art. 107. for carriage."

As to the Government Classification of Explosives, see Order in Council, No. 1, dated 5th August, 1875.

As to the Government Regulations for the Packing of Explosives, see Order of the Home Secretary, dated 10th June, 1904, as amended by Order dated 18th March, 1911.

For further information as to the Carriage of Explosives, see the General Railway Classification of Goods.

Railway companies are not bound to carry for the Admiralty and the War Office gunpowder and other ammunition except on terms to be agreed between the department concerned and the company. See sect. 6 (1) (vi) of the Cheap Trains Act, 1883.

**108.** Where a railway company are under an obligation (a) to carry as common carriers, or (b) to afford reasonable facilities for carriage under sect. 2 of the Railway and Canal Traffic Act, 1854, or (c) are otherwise under a statutory duty to carry, a consignor, in the absence of a declaration by him as to the nature of the goods, warrants that goods delivered by him to the company are safe to carry and impliedly undertakes to indemnify the company if they suffer damage by reason of such goods being of a dangerous nature. *Brass v. Maitland*, 6 E. & B. 470; *Bamfield v. Goole Transport Co.*, [1910] 2 K. B. 94; *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, [1922] 2 K. B. 742; 91 L. J. K. B. 807.

In *G. N. Ry. Co. v. L. E. P. Transport, Ltd.*, *supra*, the defendants delivered to the railway company carboys containing a liquid described by them as "oxygen water," which expression in its usual sense does not imply that the liquid so described is dangerous. In this case the goods, while correctly described in a chemical sense, were dangerous, and injured other goods during

transit. The Court of Appeal appear to have assumed that the railway company, since they did not know that the defendants' goods were in fact dangerous, were under an obligation to afford reasonable facilities for the carriage of the goods under sect. 2 of the Railway and Canal Traffic Act, 1854, and held that therefore the defendants were liable to indemnify the railway company in respect of compensation paid by the company to the owners of the goods injured by the above dangerous liquid. Chap. X.  
Art. 109.

Atkin, L. J., in the last-mentioned case at p. 777, [1922] 2 K. B., said: "In respect of goods not known by carriers to be dangerous, there is a warranty that the goods are such as may be safely carried and are not dangerous. That warranty applies in the case of carriers who are under a duty to carry, whether the duty is imposed on them by virtue of their profession as common carriers, or whether it is imposed upon them by statute, as it is in this case by sect. 2 of the Railway and Canal Traffic Act, 1854."

By sect. 105 of the Railways Clauses Act, 1845, *ante*, p. 113, no person may require a railway company to carry goods which in their judgment are dangerous, and the company can refuse to carry such goods. See *Midland Ry. Co. v. Brotherton*, 16 Ry. & Can. Ca. 402. If the company nevertheless knowingly accept dangerous goods, it would appear that the rule stated in the foregoing article will not apply to any loss thereby sustained by the company, inasmuch as they are not under a duty to carry.

**109.** A railway company are bound to receive packed parcels (*i.e.*, a package addressed to one consignee containing a quantity of parcels addressed to different persons); they are not entitled to know the contents of such parcels, *Crouch v. L. & N. W. Ry. Co.*, 23 L. J. C. P. 73; 14 C. B. 255, or to demand any higher rate on account of the nature of such a package. *Gt. W. Ry. Co. v. Sutton*, L. R. 4 H. L.



Chap. X.  
Art. 109.

226; 38 L. J. Ex. (H. L.) 177. Neither are a railway company justified in opening a package with a view to ascertain whether it consists of packed parcels. *Crouch v. L. & N. W. Ry. Co.*, 2 Car. & K. 789.

Articles sent in large aggregate quantities, although made up of separate parcels such as bags of sugar, coffee, and the like, shall not be deemed to be small parcels. Railways Act, 1921, Fifth Schedule, c. 17, re-enacting sect. 19 of the Schedule to the Railway Rates and Charges Orders, 1891—2.

110. Goods delivered to a railway company for conveyance ought to be fully and legibly addressed, that the owner or consignee may be easily known, and if in consequence of an omission to do so the owner sustains a loss or any inconvenience, he must bear the same. *Caledonian Ry. Co. v. Hunter & Co.*, 20 Sess. Ca. (2nd Ser.) 1097; *Wilson & Co. v. Scott*, Hume, 302; *Weir v. Howie*, Hume, 304; *Stewart & Co. v. Gordon*, 14 Sess. Ca. (2nd Ser.) 434.

By the Standard Conditions of Carriage (Condition 1) every consignment must be addressed in accordance with the company's regulations. See Appendix, *post*.

In the first of the above cases goods delivered to a railway agent in Glasgow, addressed to "W. Rae, Sudbury," were sent over several lines of railway to Sudbury in Derbyshire, not to Sudbury in Suffolk, for which they were intended. All correspondence with a view to discovering the proper destination was sent by goods train instead of by post, in consequence of which the goods were not delivered to the consignee till thirty-six days after they had been despatched, and he then refused them. It was held that as the originating cause of the goods being mis-sent was the imperfect address, the company were not liable for the

consequences of the delay, and this though their own conduct in the matter was not free from blame. Chap. X.  
Art. 118.

See *post*, p. 193, as to the duty of a railway company when the consignee cannot be found or refuses to accept the goods.

111. Every person being the owner or having the care of any carriage or goods passing or being upon the railway shall on demand give to the collector of tolls, at the places where he attends for the purpose of receiving goods or of collecting tolls for the part of the railway on which such carriage or goods may have travelled or be about to travel, an exact account in writing signed by him of the *full name and address of the consignee and such particulars of the nature, weight (inclusive of packing) and number of parcels or articles of merchandise handed to the company for conveyance as may be necessary to enable the company to calculate the charges therefor*, and of the point on the railway from which such carriage or goods have set out or are about to set out, and at what point the same are intended to be unloaded or taken off the railway; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to the payment of different tolls, then such owner or other person shall specify the respective numbers or quantities thereof liable to each or any of such tolls. Railways Clauses Act, 1845, s. 98, as amended by the words in italics by Railways Act, 1921, s. 56 and Sixth Schedule.

If any such owner or other such person fail to give such account, or to produce his way-bill or bill of lading, to such collector or other officer or servant of

**Chap. X.**  
**Art. 111.**

the company demanding the same, or if he give a false account, or if he unload or take off any part of his lading or goods at any other place than shall be mentioned in such account, with intent to avoid the payment of any tolls payable in respect thereof, he shall for every such offence forfeit to the company a sum not exceeding ten pounds for every ton of goods, or for any parcel not exceeding one hundredweight, and so in proportion for any less quantity of goods than one ton, or for any parcel exceeding one hundredweight (as the case may be), which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable. Railways Clauses Act, 1845, s. 99.

“(2) The company shall be entitled to refuse to convey any merchandise delivered to them for conveyance as aforesaid in respect of which the foregoing provisions of this section (*i.e.*, sect. 98 of Railways Clauses Act, 1845) have not been complied with, or to examine, weigh or count the same and make such reasonable charge therefor as they think fit: Provided that the company shall not refuse to convey the parcels or articles of merchandise handed to them for conveyance as aforesaid without giving the person an opportunity of having them weighed or counted upon payment of a reasonable charge.” Railways Act, 1921, Sixth Schedule.

By sect. 3 of the Railways Clauses Act, 1845, as amended by the Railways Act, 1921 (sect. 56 and Sixth Schedule), “the word ‘toll’ shall include any rate or charge or other payment payable under the special Act, or fixed by the Rates Tribunal under the provisions of the Railways Act, 1921.”

The expression "false account" in sect. 99 of the Railways Chap. X.  
Art. 111.  
Clauses Act, 1845, includes any false statement made with regard to the goods to be carried so as to lower the tolls which would otherwise be chargeable. See *L. & N. W. Ry. Co. v. Rickerby, Ltd.*, [1921] 1 K. B. 231; 90 L. J. K. B. 398.

Apart from the afore-mentioned sections of the Railways Clauses Act, 1845, and the provisions of the Carriers Act, 1830, *ante*, p. 52, there is no occasion to inform a railway company as to the contents or value of any packages delivered to them. *Crouch v. L. & N. W. Ry. Co.*, 14 C. B. 255; 23 L. J. C.P. 73.

A consignor who gives a false description of goods delivered by him to the railway company with intent to avoid the payment of the proper tolls thereon is liable to be convicted under sect. 99 of the Act of 1845, although the railway company are themselves acting as carriers, and although only an implied demand for an account of such goods has been made. But it is doubtful whether in the case of a false account being wilfully given by a consignor, it is necessary to prove that a demand for an account has in fact been made in order to make such consignor liable to the penalties mentioned in the above section. *Barr Moering v. L. & N. W. Ry. Co.*, [1905] 2 K. B. 113; 74 L. J. K. B. 540.

Under sects. 98 and 99 of the Railways Clauses Act, 1845, an innocent employer may be criminally liable for the act of his servant. Therefore where the manager of a limited company gave to a railway company a wrong description of certain goods with intent to avoid the payment of the proper rate, it was held that the company were guilty of an offence under these sections. *Mousell Brothers v. L. & N. W. Ry. Co.*, [1917] 2 K. B. 836; 87 L. J. K. B. 82.

Part of an electrical generator known as a stator was consigned by railway packed in two cases and described in the consignment note as "bearers" to be sent at owner's risk. The appropriate rate for bearers at owner's risk was 9s. 2d. per ton. There was no owner's risk rate for generators in parts, but there was a company's risk rate of 22s. 9d. per ton. The consignors

Chap. X.  
Art. 111.

having been convicted of having given a false description of the goods in question, it was held by the Divisional Court that there was evidence to support the conviction. *General Electric Co. v. Evans*, 105 L. T. 199; 75 J. P. 406.

112. A railway company are entitled to be paid their proper charges before they accept goods for carriage. *Pickford v. Grand Junction Ry. Co.*, 8 M. & W. 372; 10 L. J. Ex. 342.

If a consignor fraudulently conceals the value of goods in order to obtain a lower rate for their carriage, he cannot recover more than the amount of the declared value. *M'Cance v. L. & N. W. Ry. Co.*, 31 L. J. Ex. 65; 34 L. J. Ex. 39; 7 H. & N. 477; 3 H. & C. 343. See also *Walker v. Jackson*, 10 M. & W. 161; 11 L. J. Ex. 346; 12 L. J. Ex. 165.

Under the company's risk (Condition 13) and the owner's risk (Condition 12) standard conditions the company's charges for carriage are payable by the sender without prejudice to the company's rights against the consignee or any other person, but when it is stated on the consignment note that charges are payable by the consignee, the sender shall not be required to pay such charges unless the consignee fails to pay after reasonable demands. See Appendix, Forms A. and B.

113. It is the duty of a railway company to have their stations and station premises in a reasonably safe and proper condition for the transit of persons and goods between the railway and highway. *Rooth v. North E. Ry. Co.*, L. R. 2 Ex. 173; 36 L. J. Ex. 83; *Simkin v. L. & N. W. Ry. Co.*, 21 Q. B. D. 453.

The duty of a railway company towards persons using their stations in connection with railway busi-

ness is to take reasonable care that the premises are reasonably safe and is not higher than that of an ordinary occupier of business premises towards an invitee who resorts thereto. *Norman v. G. W. Ry. Co.*, [1915] 1 K. B. 584; 84 L. J. K. B. 598. Chap. I.  
Art. 128.

In *Rooth v. N. E. Ry. Co.*, *supra*, Kelly, C. B., said: "But as to securing the railway company against liability for negligence in respect of defects in the station, I think it quite impossible that the stipulation permitting the owner and his servants to accompany the cattle can affect the duty imposed by the common law upon the company of taking care that the stations belonging to them, over which persons have to pass, goods to be carried, and cattle to be driven, shall be in a fit and proper condition, so as to secure reasonable security for persons, property, or cattle, in the transit from the railway or trucks to the highway."

114. It is the duty of a railway company to have duly authorised servants to give directions and represent the company as the exigencies of the traffic may require. *Taff Vale Ry. Co. v. Giles*, 23 L. J. Q. B. 43; 2 E. & B. 822.

Where a railway company have on their premises a person who alone appears to act as their agent, upon occasions where it is necessary to act with promptness and decision, there is evidence for the jury that he is invested with a general authority to do all that is right and proper on behalf of those of whom he is the apparent representative. *Goff v. Gt. N. Ry. Co.*, 30 L. J. Q. B. 148; 3 E. & E. 672. Provided that he acts within the powers of the company. *Poulton v. L. & S. W. Ry. Co.*, L. R. 2 Q. B. 534; 36 L. J. Q. B. 294; *Ormiston v. G. W. Ry. Co.*, [1917] 1 K. B. 598; 86 L. J. K. B. 759.

Chap. X.  
Art. 114.

In *Roe v. Birkenhead, Lancashire & Cheshire Junc. Ry. Co.*, 21 L. J. Ex. 9, Pollock, C. B., said at p. 11: "The law lays down the same rule for all, and we cannot make a different rule in the case of a servant of a railway company and an ordinary tradesman. The principle is, that the master is not liable for the tortious act of the servant unless he has either given him express directions or an implied authority to do the act."

It has been held that the station-master of a railway company has not, although the general manager of a railway company has, as incidental to his employment, authority to bind the company to pay for surgical attendance, bestowed at his request on a servant of the company injured by an accident on their railway. *Walker v. G. W. Ry. Co.*, L. R. 2 Ex. 228; 36 L. J. Ex. 123.

As to the authority of officials to make arrests, Sir Montague Smith, in *Bank of New South Wales v. Ouston*, 4 App. Cas. at p. 288, said: "The result of the decisions in all these cases is that the authority to arrest offenders was only implied where the duties which the officer was employed to discharge could not be efficiently performed . . . unless he had the power to apprehend offenders promptly on the spot."

115. A railway company are bound, in the course of their business as carriers, by the contract of the agent whom they put forward as having the management of that part of their business. *Pickford v. Grand Junc. Ry. Co.*, 12 M. & W. 766.

In the above case it appeared from the evidence that certain goods were undoubtedly received by a railway company for transmission on some contract or other, and that the only person spoken to respecting such transmission was the person stationed to receive and weigh the goods. It was held that this person must have an implied authority to contract for sending the goods, and that the company were consequently bound by that contract.

Certain consignors by letter requested a firm of wharfingers,

who were also agents for a steamship company, to quote a through rate from L. to C. by one of the company's ships. The agents gave in writing a through rate "at owner's risk," which was accepted. The goods being injured during transit an action was brought to recover damages. The Court of Appeal held that there was no concluded contract in writing, and that parol evidence was admissible to show that the defendants received the goods as wharfingers only and acted in the carriage of the goods as agents and not as carriers, and that therefore they were not liable. *Pontifex v. Hartley*, 4 R. 245; 62 L. J. Q. B. 196.

Where a railway company publishes no time tables of goods traffic arrangements, the onus of enquiry lies upon the consignor. Where goods have been consigned to a railway company for carriage under an open contract, representations made to the consignor, subsequent to the making of the contract, by a servant of the railway company not proved to have authority to make such representations, are inadmissible in evidence to modify the contract. *Tobin v. L. & N W. Ry. Co.*, [1895] 2 Ir. R. 22.



## CHAPTER XI.

## CONTRACT OF CARRIAGE BY RAILWAY.

Chap. XI.  
Art. 116.

116. Sect. 42 of the Railways Act, 1921, enacts as follows:—

“Within six months from the passing of this Act, or within such further time as the rates tribunal may permit, the constituent companies in all the groups shall jointly submit to, and publish in such manner as may be prescribed by the rates tribunal—

“(a) the terms and conditions (hereinafter called ‘company’s risk conditions’) on and subject to which merchandise other than live stock, and live stock, will respectively be carried if carried at ordinary rates;

“(b) the terms and conditions (hereinafter called ‘owner’s risk conditions’) on and subject to which merchandise other than live stock, and, subject as hereinafter provided, live stock, will respectively be carried if carried at owner’s risk rates;

“(c) the terms and conditions on and subject to which damageable goods not properly protected by packing will be carried.”

Sect. 43 of the Act enacts as follows:—

“(1) The rates tribunal shall consider the terms and conditions so submitted, or, if the companies fail

to submit terms and conditions within the time so Chap. XL.  
Art. 118. allowed, shall themselves prepare and publish provisional terms and conditions, and after hearing any representative body of traders who may desire to be heard or any person who may obtain a certificate from the Board of Trade that he is, in the opinion of the Board of Trade, a proper person for the purpose, and any other party whom they consider entitled to be heard, shall settle, and when settled publish in the London and Edinburgh Gazettes the terms and conditions which they consider just and reasonable, and shall fix a date, not earlier than two months after such publication, upon which those terms and conditions are to come into force.

“(2) When the terms and conditions so settled come into force they shall be the standard terms and conditions of carriage for all railway companies and shall be deemed to be reasonable.”

Sect. 45 of the Act enacts as follows:—

“At any time after the date when the terms and conditions so settled as aforesaid come into force a railway company or any representative body of traders may apply to the rates tribunal to amend, alter or add to those terms and conditions, and the tribunal may, after hearing all parties whom they consider entitled to be heard, make such amendments, alterations, or additions of or to such terms and conditions as the tribunal think just and reasonable, and fix a date as from which they are to come into operation.

As to the constitution and jurisdiction of the Railway Rates Tribunal, see *post*, p. 208.

**Chap. XI.**  
**Art. 116.**

Standard conditions have been settled, subject to possible revision, by the Rates Tribunal as follows, and will be found in the Appendix, *post*. They are:—

- (a) For merchandise when carried by merchandise train at company's risk rates.
- (b) The same when carried at owner's risk rates.
- (c) For live stock when carried by merchandise train at company's risk rates.
- (d) The same when carried at owner's risk rates.
- (e) For damageable goods not properly protected by packing when carried by merchandise train at company's risk rates.
- (f) For coal, coke, and patent fuel when carried by merchandise train.

The Rates Tribunal have not yet fixed a date for these conditions to come into force.

**117.** Sect. 44 of the Railways Act, 1921, enacts as follows:—

“(1) On and after the date so fixed as aforesaid the terms and conditions upon and subject to which merchandise is apart from special contract to be carried by a railway company shall be company's risk conditions, and those conditions shall apply without any special contract in writing to the carriage of merchandise at ordinary rates:

“Provided that, in any case where an owner's risk rate is in operation and the company has been requested in writing to carry at that rate, the terms and conditions upon and subject to which such goods shall be carried shall be owner's risk conditions.

“(2) The terms and conditions upon and subject to which damageable goods not properly protected by packing (if accepted by the company for carriage)

shall be carried by a railway company shall be the conditions settled by the rates tribunal as aforesaid, but the company shall not be under any obligation to carry damageable goods not properly protected by packing

Chap. Xa.  
Art. 117

“(3) Subject to the provisions of the Railway and Canal Traffic Acts, 1854 and 1888, nothing in this Act shall preclude a company and a trader from agreeing in writing to any terms and conditions they think fit for the carriage of merchandise, live stock or damageable goods not properly protected by packing, or dangerous goods.”

The effect of this section appears to be as follows:—

On and after a date to be fixed by the Rates Tribunal:—

1. Except as to damageable goods not properly protected by packing, and dangerous goods (as to which last see sect. 50 of the Act, *ante*, p. 114), all merchandise will and must be carried unless otherwise arranged at the company's risk standard conditions.

2. Where an owner's risk rate is in operation the trader, on making a request in writing, may have his goods carried at the owner's risk standard conditions. No special contract need be signed in this case.

3. It is still to be open to a railway company and a trader to contract outside the standard conditions as to the carriage of any kind of merchandise (including damageable goods not properly packed and of live stock), subject to the provisions of the Railway and Canal Traffic Acts, 1854 and 1888.

While it is probable that in future traffic will be consigned in most cases under the standard conditions, the option given by sect. 44 (3) of the Act to the parties to make their own contract makes it necessary to examine the old involved law on this subject.

Shortly the position was that, except in cases coming within sect. 7 of the Traffic Act, 1854, a railway company and a trader

Chap. XI. could contract as at common law. See *G. N. Ry. Co. v. Morville*,  
Art. 117. 21 L. J. Q. B. 319; *Zunz v. S. E. Ry. Co.*, L. R. 4 Q. B.  
 539; 38 L. J. Q. B. 309; *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B.  
 373. Sect. 7 of the above Act of 1854 prevented a railway from  
 relieving themselves from loss or injury resulting from their negli-  
 gence or default unless by a special contract, which was required  
 to be just and reasonable and signed by the trader. See the  
 following Articles.

118. Sect. 7 of the Railway and Canal Traffic Act, 1854, enacts that every railway company, canal company, and railway and canal company "shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in otherwise limiting such liability, every such notice, condition, or declaration being hereby declared to be null and void: Provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to receiving, forwarding, and delivering of any of the said animals, articles, goods, or things as shall be adjudged by the Court or judge before whom any question relating thereto shall be tried to be just and reasonable . . . : Provided also, that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods or things as aforesaid shall be binding upon or affect any such party unless the same be signed by

him or by the person delivering such animals, articles, goods, or things respectively for carriage: Provided also that nothing herein contained shall alter or affect the rights, privileges, or liabilities of any such company under the said Act, 11 Geo. 4 & 1 Will. 4, c. 68 (*i.e.*, the Carriers Act, 1830), with respect to articles of the descriptions mentioned in the said Act.”

Chap. XI.  
Art. 119.

It was decided by the Exchequer Chamber in *Baxendale v. G. E. Ry. Co.*, L. R. 4 Q. B. 244, at p. 254; 38 L. J. Q. B. 137, that the above section applies only to cases in which a railway company are seeking to exempt themselves from liability by reason of there being a special contract. The absence of a signed contract in writing therefore will not in itself preclude the possibility of there being a special contract between a trader and a railway company or affect its validity.

119. Sect. 7 of the Railway and Canal Traffic Act, 1854, extends only to negligence or default within the scope of the employment of the railway company's servants and makes the company liable only for loss or injury occasioned by such neglect or default. *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. 373; *Sutcliffe v. G. W. Ry. Co.*, [1910] 1 K. B. at p. 497; 79 L. J. K. B. 437.

Therefore, a special contract which relieves a railway company from loss resulting from theft by their servants will protect the company in the event of such theft taking place without negligence or default on the part of the company although such contract does not comply with the said section. *Shaw v. G. W. Ry. Co.*, *supra*.

Chap. XI.  
Art. 119.

In *Shaw v. G. W. Ry. Co.*, [1894] 1 Q. B. 373, the plaintiff delivered to the defendant company at their station at W. G. a portmanteau containing (among other things) jewellery of the agreed value of 250*l.* to be carried to the plaintiff's house at B. S., which was on the G. E. Ry. A consignment note had been signed on behalf of the plaintiff, the material condition of which was as follows:—"The G. W. Ry. Co. give public notice that they hold themselves entirely relieved from loss of or damage done to all goods, matters or things described in the Act of Will. 4, c. 68 (a), unless the particular articles be declared and an assurance over and above the carriage be paid as compensation for the risk incurred." No declaration as to the nature or value of the contents of the portmanteau was made, nor was any assurance made. If such a declaration had been made the company would not have received the portmanteau until an extra sum for assurance had been paid. The custom of the company was to take special precautions for the carriage of parcels in respect of which a declaration was made. The portmanteau was delivered at the plaintiff's house at B. S. The jewellery was then missing. The jewellery had in fact been stolen by one of the defendant company's servants whilst being conveyed in one of their vans from Paddington to the G. E. Ry. station at Bishopsgate.

Wright, J., in delivering the judgment of the Divisional Court, held:—

(1) That on the authorities sect. 6 of the Carriers Act, 1830 (see p. 59), and the last paragraph of sect. 7 of the Railway and Canal Traffic Act, 1854 (see last Article), did not protect the defendant company.

(2) That even if the above sections of these Acts of Parliament applied and the special contract was valid, sect. 8 of the Carriers Act, 1830, whereby the company was liable for their servant's theft (see Art. 51, p. 60), would take away any protection which the company might have obtained under those sections.

(a) Carriers Act, 1830.

(3) That the plaintiff was not precluded from succeeding because she had failed to declare the value of the jewellery. Chap. XX.  
Art. 119.

The above three points were the only grounds relied on by the company.

The learned judge, while therefore holding that the company failed upon all the grounds on which their case had been argued, nevertheless decided in their favour for the reason—

(4) That "the neglect or default of the company or its servants," referred to in sect. 7 of the Act of 1854, did not apply to theft by a servant of the company without negligence on the part of the company (theft not being negligence within the scope of the servant's employment), and that at common law the company could, as they in fact had done, exempt themselves from liability for such theft by contract or notice brought home to the plaintiff.

In *Duckham Brothers v. G. W. Ry. Co.*, 80 L. T. 774, Darling, J., held that while the special contract in that case would have been unreasonable if within sect. 7 of the Traffic Act, 1854, owing to the fact that a statement respecting certain alternative rates was erroneous, yet in view of the decision in *Shaw v. G. W. Ry. Co.*, *ante*, the contract was not within sect. 7 of the above Act, inasmuch as the jury had found that the defendant company had not been guilty of any negligence, and, further, that the question of conditions and their reasonableness only become important if there is negligence, and that the contract could not therefore be set aside.

**120.** It was decided by the House of Lords in *Peck v. North Staffordshire Ry. Co.*, 10 H. L. Ca. 473; 32 L. J. Q. B. 241, that where a railway company seek to rely upon sect. 7 of the Traffic Act, 1854, the special contract therein referred to must be (a) in writing, (b) signed by the owner of the goods or the person delivering them, and (c) just and reasonable.



Chap. XI.  
Art. 130.

(a) IN WRITING.—The special contract must itself, either in terms or by distinct reference, set out or embody the conditions limiting the company's liability. If it is sought to incorporate another document, the signed instrument must either set it out, or so clearly and definitely refer to it that by force of the reference it becomes part of such instrument. See judgment of Lord Westbury, L. C., in *Peck v. North Staffordshire Ry. Co.*, *supra*.

In *Charles Wade & Co. v. L. & N. W. Ry. Co.*, [1921] 1 K. B. 582; 90 L. J. K. B. 593, a Divisional Court (Rowlatt and McCardie, JJ.) held that the words "owner's risk" upon a consignment note used by the trader were a sufficient reference to the railway company's standard owner's risk conditions, and that these formed part of the contract of carriage. The company had previously sent the plaintiffs a circular stating that if traders used their own consignment notes they must state on them that the goods were to be carried at owner's risk if that was desired. In this case McCardie, J., expressed the view that the same rule applied to cases under sect. 7 of the Traffic Act, 1854, as to decisions under the Statute of Frauds, but it is submitted that this dictum must be subject to the above quoted judgment of Lord Westbury in *Peck's Case*, namely, that the signed writing required by sect. 7 of the Traffic Act, 1854, must clearly and definitely refer to any document which it is sought to incorporate with it.

(b) CONTRACT MUST BE SIGNED BY THE PERSON WHO IS A PARTY TO IT, OR THE PERSON WHO DELIVERS THE GOODS TO THE RAILWAY COMPANY.—It is sufficient if the name of the consignor is printed in the body or the top of the consignment note. See *Joshua Buckton & Co. v. L. & N. W. Ry. Co.*, 87 L. J. K. B. 234; *Wade & Co. v. L. & N. W. Ry. Co.*, [1921] 1 K. B. 582; 90 L. J. K. B. 593. In the first of these cases the plaintiffs' clerk had also written their initials on the note, and in the second case the note was signed by a person who presumably was authorised to represent the consignors, but in both cases the judgments were directed to the validity of the printed names appearing on the notes.

In *Aldridge v. G. W. Ry. Co.*, 15 C. B. N. S. 582; 33 L. J. Chap. XX.  
Art. 138. C. P. 161, it was held that the signature of a carrier employed both by the owner of the goods and the railway company was sufficient to bind the former under a special contract.

Where goods were delivered to a railway company for carriage, along with a forwarding note, on the back of which certain conditions were printed, and which forwarding note was a printed document supplied by the railway company containing certain blanks, it was held that the fact of one of these blanks being filled up with the name of the sender, as being the party by whom the carriage was payable, was not evidence, such as the Act requires, that he had agreed to the conditions on the back of the note. *Scottish Central Ry. Co. v. Ferguson*, 2 Sess. Ca. (3rd Ser.), 781.

(c) CONDITIONS MUST BE JUST AND REASONABLE.—The onus of proving that a condition is reasonable rests upon the railway company. See judgment of Lord Cranworth in *Peek v. N. Staffordshire Ry.*, 10 H. L. Ca. 473; 32 L. J. Q. B. at p. 272; and the opinion of Blackburn, J., in the same case at p. 252 of the L. J. Report. See also *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. at p. 181; 56 L. J. Q. B. 111.

The decision in *Peek's Case* has been used as an authority for the proposition that a condition which relieves a railway company from all liability unless an extra payment is made, even though the loss arises from their own gross negligence or misconduct, is unreasonable. See, for example, *Ashendon v. L. B. & S. C. Ry. Co.*, 5 Ex. D. 190, and judgment of Lindley, L. J., in *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. at p. 185. But the decision of the House of Lords in *Peek v. N. Staffordshire Ry. Co.* must be read along with the subsequent decision of the House of Lords in *Manchester, Sheffield & Lincolnshire Ry. Co. v. Brown*, 8 App. Ca. 703; 53 L. J. Q. B. 124. In that case the special contract relieved the railway from all liability for loss or damage "by delay in transit or from whatever other cause arising" in consideration of the rates charged

**Chap. XI.** being one-fifth lower than where no such undertaking was given.  
**Art. 120.**

The company were prepared to accept the liability of common carriers if the ordinary rate was paid. The House of Lords decided that the condition relieving the railway company from all liability was reasonable, and distinguished this case from *Peek's Case* on the ground that in the latter no real alternative to send the goods at the company's risk was open to the trader.

The Court of Common Pleas had decided to the same effect in the earlier case of *Simons v. G. W. Ry. Co.*, 18 C. B. 805; 26 L. J. C. P. 25; and see also *Beal v. South Devon Ry. Co.*, 5 H. & N. 875; 3 H. & C. 337; 29 L. J. Ex. 441.

It is submitted that the right view is that expressed by Blackburn, J., in his opinion in *Peek's Case* at pp. 251—2 of 32 L. J. K. B., namely, that a condition exempting the railway company wholly from liability for the neglect and default of their servants is *primâ facie* unreasonable, but that if they offer to carry for a reasonable remuneration at their own risk, and at the same time offer to carry at a reduced rate upon condition that they are relieved from all liability, the latter condition is reasonable.

It may be observed that in *Peek v. N. S. Ry. Co.*, *ante*; *Ashendon v. L. B. & S. C. Ry. Co.*, 5 Ex. D. 190; and *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. 176 (where a condition relieving the railway company from all liability was held to be unreasonable), the company in each case were requiring the payment of a sum over and above their ordinary rate as a condition of their accepting liability, and failed to show that this increased rate was a reasonable remuneration for carrying at their own risk.

The decision of the Court of Appeal in *Lewis v. G. W. Ry. Co.*, 3 Q. B. D. 195; 47 L. J. Q. B. 131 (see *post*, p. 150), has been treated as an authority for the supposed rule that the conditions of an owner's risk consignment note were unreasonable, and therefore invalid, unless the railway company accepted thereunder a liability for loss due to the wilful misconduct of their servants. The actual points decided in that case were (1) that the existence of a real alternative carrier's risk rate

rendered the owner's risk conditions reasonable; and (2) that the particular action of the company's servants did not amount to "wilful misconduct." With regard to the question as to whether a condition relieving the company from the results of wilful misconduct was reasonable, Bramwell, L. J., thought that it would be reasonable, while Brett and Cotton, L. JJ., although leaning in the other direction, expressed no final opinion.

It is to be observed that *Lewis v. G. W. Ry. Co.* was decided before the judgment of the House of Lords in *M. S. & L. Ry. Co. v. Brown*, *ante*, p. 141.

### *Reasonable and Unreasonable Conditions.*

121. The following conditions have been held to be reasonable:---

1. "Goods conveyed at special or mileage rates must be loaded and unloaded by the owners or their agents, and the company will not be responsible for any risk of stowage, loss or damage, however caused, nor for discrepancy in the delivery as to either quantity, number or weight, nor for the condition of articles so carried, nor for detention or delay in the conveying or delivery of them, however caused." *Simons v. Great Western Ry. Co.*, 18 C. B. 805; 26 L. J. C. P. 25.

2. "That the company will not, under any circumstances, be liable for loss of market or other claim arising from delay or detention of any train, whether at starting, or at any of the stations, or in the course of the journey"; in answer to a claim arising from loss of market. *White v. Great Western Ry. Co.*, 26 L. J. C. P. 158. See *Beal v. South Devon Ry. Co.*, *post*, p. 145; *Lord v. Midland Ry. Co.*, 36 L. J. C. P. 170; L. R. 2 C. P. 339.

3. "The company is to be held free from all risk or responsibility in respect of any loss or damage arising in the loading or unloading, from suffocation, or from being trampled on, bruised, or otherwise injured in transit, from fire, or from any other cause

Chap. XI. whatever. The company is not to be held responsible for carriage  
Art. 131. or delivery within any certain or definite time, nor in time for any particular market"; in answer to a claim for suffocated and injured cattle sent by rail. *Pardington v. South Wales Ry. Co.*, 26 L. J. Ex. 105; but see *M'Manus v. Lanc. & York. Ry. Co.*, 28 L. J. Ex. 353; 4 H. & N. 327; and *Rooth v. N. E. Ry. Co.*, L. R. 2 Ex. 173; 36 L. J. Ex. 83.

4. "No claim for deficiency, damage, or detention shall be allowed unless made within three days after delivery of the goods, nor for loss unless made within seven days after the time when they should have been delivered." *Lewis v. G. W. Ry. Co.*, 5 H. & N. 867; 29 L. J. Ex. 425. But in *Murphy v. M. G. W. Ry. of Ireland Co.*, [1903] 2 I. R. 5, the Irish King's Bench Division refused to follow this decision, and held that since the decision in *Peek's Case* such a condition could not be considered reasonable. See *post*, p. 148.

5. "The company shall not be liable for loss from or damage or delay to a consignment or any part thereof unless a claim be made in writing within three days after the termination of the carriage of the consignment . . . or for non-delivery of a consignment unless a claim be made in writing within fourteen days after its receipt by the first contracting company." *O'Keefe v. G. W. Ry. Co.*, 123 L. T. 269.

6. "The company will not be answerable for the loss or detention of any goods untruly or incorrectly described or declared in the declaration or receiving-note furnished by the company." *Lewis v. G. W. Ry. Co.*, *supra*.

7. "The company will not undertake to convey fish except under the general conditions published at the railway stations in the train tables, and except under the following special conditions:—'That the company shall not be responsible under any circumstances for loss of market, or other loss or injury arising from delay or detention of trains, exposure to weather, stowage, or from any cause whatever other than gross neglect or fraud.'"

In the time tables of the company the regulations for conveying fish were as follows:—

Chap. XX.  
Art. 191.

"Fish, under special conditions, will be conveyed by certain specified trains. No fish will be conveyed by the 10.45 a.m. up-train. The company will not undertake to carry fish by the 7.10 p.m. up-train, but in limited quantities, subject in all cases to the immediate convenience and arrangements of the company."

"The company hereby give notice that fish conveyed upon the railway is so conveyed by special agreement only, and on the express condition that the sender or his agent shall, on delivering the fish at the company's station or other place whence the same is to be conveyed, sign an order and declaration exempting the company from all liability for loss or injury arising from delay or detention of train, or from any cause other than gross neglect or fraud." *Beal v. South Devon Ry. Co.*, 29 L. J. Ex. 441; 5 H. & N. 875; affirmed in Ex. Ch. 3 H. & C. 337.

8. "The company will not be answerable for the loss or detention in respect of goods destined for places beyond the limits of the company's railway; and as respects the company, their responsibility will cease when such goods shall have been delivered over to another carrier in the usual course for further conveyance. Any money which may be received by the company as payment for the conveyance of goods beyond their own limits will be so received only for the convenience of the consignors, and for the purpose of being paid to the other carrier." *Aldridge v. Great Western Ry. Co.*, 33 L. J. C. P. 161; 15 C. B. (N. S.) 582

9 "The company will not in any case be responsible beyond the following sums . . . dogs, deer, and goats . . . 2*l.* each unless a higher value be declared at the time of delivery to the company, and a percentage of 1 $\frac{1}{4}$  per cent. (minimum 3*d.*) paid upon the excess of the value so declared." *Williams v. Midland Ry. Co.*, [1908] 1 K. B. 252; 77 L. J. K. B. 157, Court of Appeal.

**Chap. XI.** 10. "The company will not be responsible for any damage to  
**Art. 151.** any such articles (i.e., perishables) on the ground of loss of market, provided the same be delivered within a reasonable time after the arrival thereof at the station from whence delivery is to be made." *Lord v. Midland Ry. Co.*, L. R. 2 C. P. 339; 36 L. J. C. P. 170.

11. "Perishable articles not delivered in consequence of a strike may be sold without notice to the sender or consignee, and payment of the net proceeds shall be equivalent to delivery." *Reader v. S. E. & C. and L. & N. W. Ry. Cos.*, 38 T. L. R. 15, per Rowlatt, J.

12. "The company will not be liable for any loss of, or damage to, or delay of goods resulting from their being not properly protected from packing." *Sutcliffe v. G. W. Ry. Co.*, [1910] 1 K. B. 478; 79 L. J. K. B. 437.

The decision of the Court of Appeal in *Sutcliffe v. G. W. Ry. Co.*, *supra*, would appear to overrule the decision of the Court of Common Pleas in *Simons v. G. W. Ry. Co.*, 18 C. B. 805; 26 L. J. C. P. 25, where it was held that the following condition as applied to furniture was unreasonable: "The company will not be accountable for the loss, detention, or damage of any package insufficiently or improperly packed, marked, directed or described, or containing a variety of articles liable by breakage to damage each other." This was followed by the Court of Queen's Bench in *Garton v. Bristol & Exeter Ry. Co.*, 1 B. & S. 112; 30 L. J. Q. B. 273. In *Sutcliffe's Case* Kennedy, L. J., said: "The question was presented to the Court in that case (*Simons v. G. W. Ry. Co.*) upon a demurrer to the third plea. The particular circumstances as to the existence of risk owing to the fragility of the goods, if unpacked, do not appear; and, further, in that case the railway company had stipulated for a total, and not as here, a partial exclusion of liability." See [1910] 1 K. B. at p. 505.

122. The following conditions have been held to be unreasonable:— Chap. XI.  
Art. 122.

1. "This ticket is issued subject to the owner undertaking all risks of conveyance, loading and unloading whatsoever, as the company will not be responsible for any injury or damage (howsoever caused) occurring to live stock of any description travelling upon the Lancashire and Yorkshire Railway, or in their vehicles." *M'Manus v. Lancashire & Yorkshire Ry. Co.*, 28 L. J. Ex. 353; 4 H. & N. 327; *Gregory v. West Midland Ry. Co.*, 33 L. J. Ex. 155.

2. In *Rooth v. N. E. Ry. Co.*, (L. R. 2 Ex. 173; 36 L. J. Ex. 83, cattle were consigned upon the following conditions *inter alia*: (1) "The owner undertakes all risks of loading, unloading and carriage whether arising from the negligence or default of the company or their servants, or from defect or imperfection in the station, platform or other places of loading or unloading, or of the carriage in which the cattle may be loaded or conveyed, or from any other cause whatsoever." (2) "The company will grant free passes to persons having the care of live stock as an inducement to owners to send proper persons with and to take care of them." It was held that the first condition was unreasonable, notwithstanding the fact that under the second the company gave a free pass to the person travelling with the cattle.

3. "The company shall not be responsible for the loss of or injury to any marbles, musical instruments, toys or other articles, which from their brittleness, fragility, delicacy or liability to ignition are more than ordinarily hazardous, unless declared and insured according to their value." *Peck v. N. Staff. Ry. Co.*, 10 H. L. Cas. 473; 32 L. J. Q. B. 241.

4. "The company will not be answerable for the loss or detention of or damage to wrappers or packages of any description charged by the company as 'empties.'" *Aldridge v. G. W. Ry. Co.*, 33 L. J. O. P. 161; 15 C. B. (N. S.) 582.



Chap. XI.  
Art. 122.

5. "The company are not to be answerable for any consequences arising from over-carriage, detention or delay in or in relation to the conveying or delivery of the said animals, however caused." *Allday v. G. W. Ry. Co.*, 34 L. J. Q. B. 5; 5 B. & S. 903; *Kirby v. G. W. Ry. Co.*, 18 L. T. N. S. 658.

6. "The railway company will not be liable 'in any case' for loss or damage to a horse or dog above certain specified values delivered to them for carriage, unless the value is declared." *Ashendon v. London & Brighton Ry. Co.*, 5 Ex. D. 190; 42 L. T. 586.

7. "The company are not and will not be common carriers of dogs, nor will they receive dogs for conveyance except on the terms that they shall not be responsible for any amount of damages for the loss thereof, or for injury thereto beyond the sum of 2l., unless a higher value be declared at the time of delivery to the company, and a percentage of 5 per cent. paid upon the excess of value beyond the 2l. so declared." *Dickson v. Gt. N. Ry. Co.*, 18 Q. B. D. 176; 56 L. J. Q. B. 111. But see *Williams v. Mid. Ry. Co.*, [1908] 1 K. B. 252; 77 L. J. K. B. 157.

8. "Every stipulation or condition professing to exempt a railway company from liability for its own negligence or misconduct, or that of its servants or agents" *Per* Lord Wensleydale in *Peck v. N. Staff. Ry. Co.*, *ante*, p. 147, *Lyon v. Mells*, 5 East, 438; *Doolan v. Midland Ry. Co.*, 2 App. Cas 792.

9. In *Murphy v. Midland G. W. Ry. of Ireland Co.*, [1903] 2 I. R. 5, the following condition was contained both in the railway company's ordinary and owner's risk contracts, namely, that no claim in respect of livestock for loss, injury or delay would be allowed unless made in writing, in case of injury or delay, within three days after delivery, such delivery to be deemed complete at the termination of the transit, or, in case of loss, within seven days after the time when the livestock should, in the ordinary course, have been delivered. The Irish King's Bench Division (Lord O'Brien, C. J., dissenting) held that the above condition

was not just and reasonable, and, no fair alternative being offered, <sup>chap. III.</sup> was void. This is opposed to the decision of the English Court <sup>Art. III.</sup> in *Lewis v. G. W. Ry. Co.*, 5 H. & N. 867; 29 L. J. Ex. 425, *ante*, p. 144.

They also held that such a condition was one "with respect to the receiving, forwarding and delivering of animals, goods, or things," within sect. 7 of the Traffic Act, 1854, thereby refusing to follow the dictum to the contrary of FitzGerald, J., in *Moore v. G. N. Ry. of Ireland Co.*, 10 L. R. Ir. at p. 106.

As to the unreasonableness of part of the contract avoiding that part only, see *M'Cance v. L. & N. W. Ry. Co.*, 31 L. J. Ex. 65; 7 H. & N. at p. 489; and *per* Kelly, C. B., in *Rooth v. N. E. Ry. Co.*, L. R. 2 Ex. 178.

Where conditions are in the alternative, if either of them is unreasonable, both are. See *Lloyd v. Limerick & Waterford Ry. Co.*, 15 Ir. C. L. Rep. 37.

**123.** The following are decisions on alternative rates. The reasonableness of the alternative rate and of its conditions are questions for the judge and not for the jury. *Sheridan v. Mid. G. W. Ry. Co.*, 24 Ir. L. R. 146.

1. In *M. S. & L. Ry. Co. v. Brown*, 8 App. Ca. 703; 53 L. J. Q. B. 124, a fish merchant delivered fish to the railway company for carriage upon a signed contract relieving the company "from all liability for loss or damage by delay in transit or from whatever other cause arising," in consideration of the rates being one-fifth lower than where no such undertaking was granted; the contract to endure for five years. The servants of the company accepted the fish, although from pressure of business they could not carry it in time for the intended market, and the fish lost the market. It was held that the merchant had a *bonâ fide* option to send fish at a reasonable rate with liability on the company as common carriers, or at the lower rate upon the terms

Chap. XI. of the contract, and that the contract was in point of fact just and  
Art. 133. reasonable within sect. 7 of the Railway and Canal Traffic Act, 1854, and covered the delay.

2. In *Lewis v. G. W. Ry. Co.*, 3 Q. B. D. 195; 47 L. J. Q. B. 131, certain cheeses were carried from L. to S. "at owner's risk." There were two rates of carriage: a higher rate when the company took the ordinary liability of carriers, and a lower when they were relieved of all liability except that arising from the wilful misconduct of their servants. The defendants' servants packed the cheeses in such a manner that during their transit upon the defendants' railway they were damaged, but the defendants' servants did not know that damage would result from the mode in which the cheeses were packed. It was held that, as the defendants carried at alternative rates, the condition excepting them from liability when carrying at the lower rate was just and reasonable within the meaning of sect. 7 of the Railway and Canal Traffic Act, 1854, and that the injury to the cheeses had not arisen from the wilful misconduct of their servants.

3. A railway company had two rates for the carriage of goods—one, the ordinary or higher rate, when they undertook the ordinary liability of carriers; the other a reduced rate, when the sender relieved the company of all liability for loss, or damage or delay, except upon proof that such loss, or damage or delay, arose from wilful misconduct on the part of their servants. It was held that the higher rate not being shown to be prohibitive or excessive, the alternative afforded to the public was just and reasonable; and therefore that a contract founded upon the latter branch of it was valid. *Gallagher v. Great W. Ry. Co.*, 8 Ir. R. C. L. 326.

4. A railway company contracted to carry at a reduced rate the plaintiffs' cattle from Dublin to certain towns in England upon a special contract that the same should be conveyed at the owners' sole risk, in connection with the sea part of the transit. The alternative contract of carriage at ordinary rates offered by the company was subject to the condition "that, where the charge

of conveyance is per waggon, as the owner or his servant is required to superintend the loading of the stock, and is allowed to place as many animals in such waggon as he considers may be conveyed with safety, the company will not be responsible for loss arising in any way from the overcrowding of such waggons, or for injuries done in the loading or unloading thereof, or in consequence of one animal injuring another." It was held that both the condition respecting the sea part of the transit to which the special contract was subject, and the condition in the alternative contract of carriage offered, were unjust and unreasonable. *Corrigan v. Great Northern and Manchester, Sheffield, and Lincolnshire Ry. Cos.*, 6 L. R. Ir. 90.

5. The plaintiff delivered cattle, carriage prepaid, to a railway company on the terms of signed conditions, whereby, in consideration of an alternative reduced rate, it was agreed that the company were "not to be liable in respect of any loss or detention of or injury to the said animals, or any of them, in the receiving, forwarding, or delivery thereof, except upon proof that such loss, detention, or injury arose from the wilful misconduct of the company or its servants." The cattle were carried; but, on application made for them by the plaintiff, the defendants, in consequence of their clerk having negligently omitted to enter the cattle on the consignment note as "carriage paid," refused to deliver them, and alleged that the carriage was not paid. The cattle were kept exposed to the weather until the next day, when they were delivered. They were damaged by the exposure. In an action for wrongful detention and negligence, it was held, that the withholding of the cattle, under a groundless claim to retain them, at the end of the transit was not "detention" within the conditions, and the company were therefore liable. *Gordon v. Gl. W. Ry. Co.*, 8 Q. B. D. 44; 51 L. J. Q. B. 58.

6. As an alternative to a carriers' contract which admittedly contained unreasonable conditions, the carriers offered to carry at certain reasonable rates, but subject to a condition "that they

**Chap. XI.** would not be accountable for the correct selection of the owner's  
**Art. 133.** cattle on landing, nor on loading into the waggon at L." (the termination of the sea journey), "nor on unloading at destination." It was held that this condition would extend to exempt the carriers from responsibility for negligence or default on their own part in the selection of the cattle on landing, and was therefore unreasonable and unjust. *M'Nally v. Lancashire and Yorkshire Ry. Co.*, 8 L. R. Ir. 81.

7. In an action against a railway company, as carriers, for negligence, whereby a horse delivered to them for carriage at a reduced rate was injured at one of their stations, it was held, that a condition exempting the defendants "in all cases from liability for injuries caused by fear or restiveness of animals," applied only to injury from fear or restiveness caused by the transit, with its ordinary incidents, and without any negligence or default on the part of the company; and that, taken in this limited sense, the condition was not unreasonable. *Moore v. Gt. N. Ry. Co. (Ireland)*, 10 L. R. Ir. 95.

8. In *Ronan v. Mid. Ry. Co.*, 14 L. R. Ir. 157, cattle belonging to the plaintiff were being conveyed from Dublin to M. H. under a signed contract at a reduced rate, and at owner's risk. One of the terms of such contract was that the railway company would not be accountable for "any loss caused by delay or injury to live stock taking place before or at shipment, on the journey, or at or after landing; nor for any loss or injury to live stock whether arising . . . from any fault, negligence or mistake of the master, officers, seamen or crew of the vessels or other servants of the City of Dublin Steam Packet Co." The plaintiff alleged that his cattle had been wilfully mutilated by the crew of the vessel in which they had been conveyed, and the Common Pleas Division of the Irish Court held, on a demurrer by the defendant company, (1) that the contract did not, in its terms, exempt the railway company from liability for acts of wilful misconduct

on the part of the crew, and (2) that such a condition would be unreasonable. Chap. XI.  
Art. 159.

9. Cattle were carried by a railway company under a special contract signed by the consignor, which stated that the company had two rates for the conveyance of cattle: one the ordinary rate when they took the ordinary liability of the carrier; the other a reduced rate; that these cattle were to be carried at the reduced rate, the company to be relieved from all liability in case of damage or delay except upon proof that such loss, detention, or injury arose from wilful misconduct on the part of the company's servants. A notice was posted up in the company's office which stated that the company had two rates, namely, the owner's risk rate upon the terms above given, and the company's risk rate which was 10 per cent. above the owner's risk rate, at which the company undertook the ordinary risk of carriers in respect of rail transit, limited for neat cattle to 15*l.*, for pigs and sheep to 2*l.*, but did "not admit liability for any animals dying of disease or arriving at destination in such condition as to be able to walk from the truck." The consignor had never seen any rate but the owner's risk rate. After two trials cattle had ceased to go at the higher rate. The higher rate was less than the maximum allowed by the company's Acts. No list of rates was exhibited.

The cattle having been injured through the negligence (but not the wilful misconduct) of the company's servants, it was held by the House of Lords that the notice of the higher rate was not invalidated by the limitation as to value, nor by the fact that it did not mention the terms upon which cattle could be carried without limitation of value, as provided by the Railway and Canal Traffic Act, 1854, s. 7, that the clause as to not admitting liability meant only that the liability must be established by proof; that so construed the condition was just and reasonable within sect. 7, that the consignor might have known and must be taken to have known the terms of the higher rate, and had the offer of a just and reasonable alternative; and that the company were therefore

Chap. XI. protected by the special contract. *G. W. Ry. Co. v. McCarthy*,  
Art. 123. 12 App. Cas. 218; 56 L. J. P. C. 33.

See also the following Irish cases:—

*Sheridan v. Mid. G. W. Ry. Co.*, 24 Ir. L. B. 146.

*Nevin v. Gt. S. & W. Ry. Co.*, 30 Ir. L. R. 125.

*Curran v. Mid. G. W. Ry. Co.*, [1896] 2 Ir. R. 183.

*Knox v. G. N. Ry. Co. of Ireland*, [1896] 2 Ir. R. 632.

**124.** "Wilful misconduct" means misconduct to which the will is party as contradistinguished from accident, and is far beyond any negligence, even gross or culpable negligence. It involves that a person wilfully misconducts himself who knows and appreciates that it is wrong conduct on his part in the existing circumstances to do, or to fail or omit to do (as the case may be), a particular thing, and yet intentionally does, or fails or omits to do it, or persists in the act, failure or omission, regardless of consequences, or who acts with reckless carelessness, not caring what the result of his carelessness may be. *Graham v. Belfast & N. Counties Ry. Co.*, [1901] 2 I. R. 13; *Forder v. G. W. Ry. Co.*, [1905] 2 K. B. 532; 74 L. J. K. B. 871.

Where a railway company are relieved from liability except upon proof that loss arose from the wilful misconduct of their servants, the burden of proof is thrown upon the trader, and the refusal or inability of the company to account for the loss of particular goods does not amount to evidence which justify an inference of wilful misconduct. *H. C. Smith, Ltd. v. G. W. Ry. Co.*, [1922] 1 A. C. 178; 91 L. J. K. B. 423.

The standard owner's risk conditions for merchandise and live stock provide that subject to certain exceptions the railway companies shall not be liable for loss, damage, deviation, misdelivery, delay or detention of or to a consignment or any part thereof except upon proof that the same arose from the wilful misconduct of the company or their servants. See Appendix, Forms B and D, Condition 3. Chap. XI.  
Art. 194.

The definition of "wilful misconduct," set out in the above Article, is (except as to the last two lines) that given by Johnson, J., in *Graham's Case*, and was approved by Lord Alverstone, C. J., in *Forder's Case*, subject to the addition as to "carelessness."

Delivery of the goods to a person whom the servant of the railway company knows not to be the consignee or his agent is "misconduct." *Hoare v. G. W. Ry. Co.*, 37 L. T. 186.

No presumption of "misconduct" arises from unreasonable delay: *Graham v. Belfast Ry. Co.*, *ante*; or mere mis-delivery: *Stevens v. G. W. Ry. Co.*, 52 L. T. 324; or unexplained injury: *Haynes v. G. W. Ry. Co.*, 41 L. T. 436.

The fact that goods are injured in transit is in itself no evidence of negligence. *Russell v. L. & S. W. Ry. Co.*, 24 Times L. R. 548.

In *H. C. Smith, Ltd. v. G. W. Ry. Co.*, [1922] 1 A. C. 178; 91 L. J. K. B. 423, a parcel was delivered to a carman of the railway company at Birmingham for carriage over their railway on an owner's risk contract, whereby the railway company were relieved from liability for loss, except upon proof that it arose from the wilful misconduct of their servants. The parcel reached the collecting office at Birmingham station, where it was checked and weighed. It then disappeared and was not again heard of. The railway company in answer to interrogatories stated that they had no knowledge or means of knowledge as to whether the parcel was dispatched or arrived at its destination. The House of Lords held that there was no evidence of wilful misconduct, and without expressing any opinion as to the decision



Chap. XI.  
Art. 134.

of the Court of Appeal in Ireland in *Curran v. Mid. G. W. Ry. Co. of Ireland*, [1896] 2 I. R. 183 (where the unexplained disappearance of certain pigs during transit was held to be evidence of wilful misconduct), distinguished that case from *Smith's Case* on the ground that in the Irish case the railway company had given no answer to a request for information as to what had happened.

In the Scottish case of *Bastable v. N. B. Ry. Co.*, [1912] S. C. 555; 49 Sc. L. R. 446, the omission of a railway official to gauge a loaded truck as required by the railway company's regulations, with the result that the goods on the truck were injured, was held to amount to wilful misconduct.

Goods consigned at owner's risk and packed in a crate were being loaded on a railway company's lorry when it became necessary for the driver to lead on the horse, and he thereupon asked another man to hold the crate. This nevertheless overturned, and the goods were injured. It was held that there was no evidence of misconduct. *Sheppard & Son v. Midland Ry. Co.*, 85 L. J. K. B. 283.

Where a railway company were asked to send a five ton wagon to a trader's premises to collect certain machinery, and a wagon of a three ton capacity only was sent, with the result that the wagon broke down and the machinery was damaged, it was held that there had been no wilful misconduct on the part of the company's servants. *Joshua Buckton & Co. v. L. & N. W. Ry. Co.*, 87 L. J. K. B. 234; 117 L. T. 556.

In the last-mentioned case the trader used a consignment form of his own, on which his clerk had written "O. R.," understanding thereby that the goods would be carried at a lower owner's risk rate. The railway company had previously given notice to the plaintiffs that the company's ordinary owner's risk conditions would apply to goods so consigned, and it was held by Astbury, J., that the company on these facts were liable only for wilful misconduct.

This decision may be compared with that of the Divisional

Court in *United Machine Tool Co. v. G. W. Ry. Co.*, 30 Times L. R. 312. In that case a milling machine was conveyed in a cart of the railway company from the trader's premises to the station, and on arriving there was found to be damaged. The trader's servant had given the carman a consignment note which he (the servant) had marked "O. R." and initialled. There was some evidence that the damage occurred while in possession of the railway company. It was held that the onus lay on the railway company to disprove negligence on the part of their servants, failing which they were liable. In *Norris v. Gt. Central Ry. Co.*, 114 L. T. 183; 32 Times L. R. 120, the railway company's servants were directed to cover a truck containing goods with a tarpaulin prior to their being dispatched, and there was evidence that they had done so. When the goods reached their destination they were found to be damaged by rain and snow. It was held that, irrespective of the above evidence, there was no evidence of wilful misconduct.

Boots in boxes, made up into a parcel, were consigned at owner's risk: on being delivered to the consignee it was found that two pairs had been stolen during transit. There was no evidence that the public had had access to the parcel, but there was evidence that the trains on the route in question were made up of corridor carriages. It was held that there was evidence that the boots had been stolen by a servant of the company, who were held to be liable *H. C. Smith, Ltd. v. Midland Ry. Co.*, 88 L. J. K. B. 868. 121 L. T. 27.

**125.** The provisions of sect. 7 of the Railway and Canal Traffic Act, 1854, are limited to contracts of carriage over the railways worked by the company with whom the contract is made unless otherwise extended by a special Act of Parliament, *e.g.*, to vessels worked by the company. Therefore, a railway company are (subject to the provisions of the general law) free to limit their liability in any way

Chap. XI.  
Art. 135.

as to such part of the transit as does not take place on lines worked by them. *Zunz v. S. E. Ry. Co.*, L. R. 4 Q. B. 539; 38 L. J. Q. B. 209. See also *Aldridge v. G. W. Ry. Co.*, 15 C. B. (N. S.) 582; 33 L. J. C. P. 161.

In *Zunz's Case* the plaintiff took a ticket from London to Paris, one of the conditions of which was that the railway company were not responsible for luggage except on their own trains and boats. There was no signed contract. The plaintiff's luggage was lost on the French railway, and it was held that there was no need of a signed contract to relieve the company from liability for loss off their own line.

**126.** A general notice will not limit the liability of a railway company for loss arising from their neglect, even though the goods to which such notice applies are in pursuance of the terms of such notice carried by some mode of conveyance other than and superior to that which the company are, as carriers, bound to supply. In such a case a special contract in accordance with the Traffic Act, 1854, is necessary to relieve the company from liability. *Wilkinson v. L. & Y. Ry. Co.*, [1907] 2 K. B. 222; [1906] 2 K. B. 619; 75 L. J. K. B. 603.

In the above case the railway company published in their timetables a notice that commercial travellers were allowed to take with them, free of charge, certain quantities of luggage (being a greater amount than that allowed to ordinary travellers) on condition that the company were relieved from all liability for loss, damage, mis-delivery or delay. The plaintiffs, who were commercial travellers, and travellers on the defendant company's line, took with them in the same train certain luggage admittedly not ordinary passengers' luggage, which by the negligence of the defendants' servants was dropped in the sea and lost.

In an action brought to recover the value of such luggage, the Court of Appeal held that a signed contract within sect. 7 of the Railway and Canal Traffic Act, 1854, alone could relieve the defendants from liability, and that the general notice in the timetables was insufficient, notwithstanding that the defendants were not obliged to carry the luggage in question by passenger train.

Chap. XI.  
Art. 136.

127. If the sender of goods fills up and signs a receiving note on which conditions of carriage are printed, the presumption is that he understood and assented to these conditions. *Lewis v. G. W. Ry. Co.*, 5 H. & N. 867; 29 L. J. Ex. 425. But he would not be bound by such conditions if, to the knowledge of the railway company's agent, he could not see to read such conditions and was not aware of their effect. *Simons v. G. W. Ry. Co.*, 2 C. B. (N. S.) 620.

In the latter case it was proved that the plaintiff, when asked by the company's clerk, at the time of delivering the goods, to sign a paper, refused to do so on the ground that he could not see to read it, and that the clerk said it was of no consequence, and that the signature was a mere matter of form, and that the plaintiff, relying on that assurance, signed the paper; it was held that the jury were warranted in finding that the goods were not received subject to the special contract.

Sect. 44 (1) of the Railways Act, 1921, provides that, apart from special contract, the company's risk standard conditions are to apply, without any special contract in writing, to the carriage of merchandise at ordinary rates. See *ante*, p. 134.

## CONTRACT OF RAILWAY COMPANY TO CARRY BY SEA.

Chap. XI.  
Art. 128.  

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128. Where a railway company by through booking contract to carry any goods from place to place, partly by railway and partly by sea, or partly by canal and partly by sea, a condition exempting the company from any loss or damage which may arise during the carriage of such goods by sea from the act of God, the King's enemies, fire, accidents from machinery, boilers and steam, and all and every other dangers and accidents of the sea, rivers and navigation of whatever kind soever, shall, if published in a conspicuous manner in the office where such through booking is effected, and if printed in a legible manner on the receipt or freight note which the company gives for such goods, be valid as part of the contract between the consignor of such goods and the company in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such condition. (The Regulation of Railways Act, 1868, s. 14.)

Where a railway company under a contract for carrying persons, animals, or goods by sea procure the same to be carried in a vessel not belonging to the railway company, the railway company shall be answerable in damages in respect of loss of life or personal injury, or in respect of loss or damage to animals or goods, in like manner and to the same amount as the railway company would be answerable if the vessel had belonged to the railway company; provided that such loss of life or personal injury, or loss or damage to animals or goods, happens to the

person, animals, or goods (as the case may be) during the carriage of the same in such vessel, the proof to the contrary to lie upon the railway company. (Regulation of Railways Act, 1871, s. 12.) chap. XI  
Art. 129.

Where a passenger and luggage are carried gratuitously, the conditions mentioned in sect. 14 of the above Act of 1868 need not be complied with by the railway company. *The Stella*, [1900] P. 161; 69 L. J. P. 70.

Sect. 16 of the same Act provides that where a company are authorised to use, maintain, and work steam vessels, tolls are to be charged equally to all persons using the vessels, and that no advantage is to be given to persons by reason of their having previously travelled over the railway.

**129.** The provisions of sect. 2 of the Railway and Canal Traffic Act, 1854, . . . apply to traffic by sea in any vessels belonging to or chartered or worked by any railway company, or in which any railway company procures merchandise to be carried. (Railway and Canal Traffic Act, 1888, s. 28.)

This section requires a railway company to afford reasonable facilities for traffic and not to give any undue preference to any particular person or traffic.

As to reasonable facilities, see *post*, p. 312.

As to undue preference, see *post*, p. 373.

**130.**—(a) Sect. 31 of the Railways Clauses Act, 1863, as incorporated in any Act passed before or after the passing of the Railways Act, 1921, and (b) any provisions corresponding to that section which are contained in any special Act relating to any railway company—are repealed as from the appointed day by sect. 56 and the Sixth Schedule of the Railways Act, 1921.

**Chap. XI.**  
**Art. 189.**

As to the appointed day, see *post*, pp. 221—2.

These provisions of the Railways Act, 1921, have effected an important alteration in the position of railway companies with regard to their contracts of sea carriage. For some time prior to 1863, it had been the practice to insert in any special Act empowering a railway company to own and work sea-going vessels a section whereby the provisions of the Railway and Canal Traffic Act, 1854, were extended to such vessels. Sect. 31 of the Railways Clauses Act, 1863, which was incorporated with all railway special Acts relating to steam vessels passed after that date contained a like provision.

The result in either case was that the provisions of sect. 7 of the Traffic Act, 1854, applied to the contracts of a railway company to carry by sea as well as by land. These contracts therefore were required (a) to be signed by or on behalf of the owner of the goods, and (b) to be just and reasonable. This was necessary in cases where and although the transit was by sea only. See *Riggall v. Gt. Central Ry. Co.*, 101 L. T. 392; *Jenkins v. Gt. Central Ry. Co.*, [1912] 1 K. B. 1; 81 L. J. K. B. 24. So also in the case of a through land and sea owner's risk rate it was held that the absence of an alternative company's risk rate for the sea portion of the journey invalidated the contract. See *Western Electric Co. v. G. E. Ry. Co.*, [1914] 3 K. B. 554; 83 L. J. K. B. 1326.

It may also be pointed out that sect. 16 of the Regulation of Railways Act, 1868 (which was a general and not a Clauses Act), had extended the Railway and Canal Traffic Act, 1854, to traffic in vessels owned or worked by railway companies. This section was, however, repealed by sect. 59 of the Railway and Canal Traffic Act, 1888. The present position therefore is that as regards traffic carried in vessels owned or worked by them, railway companies will be free to contract in the same way as ordinary shipowners, but

- (a) will be subject to the obligations imposed by sect. 28 of the Traffic Act, 1888, as to affording reasonable facilities and avoiding undue preference;

- (b) where their powers of charge are limited by statute, shall as from the appointed day make reasonable charges for passengers by sea and their luggage, the question of reasonableness to be settled, if necessary, by the Rates Tribunal. Railways Act, 1921, s. 53. Chap. XI.  
Art. 100.
- (c) where merchandise is carried partly by land and partly by sea, shall show in their books and tables the rates charged for sea traffic, stating what proportion of any rate is appropriated to conveyance by sea. Railways Act, 1921, s. 54 (5).
- (d) The rights and immunities of carriers of goods by sea, which would appear to include the vessels of railway companies, are now regulated by the Carriage of Goods by Sea Act, 1924.

**131.** A railway company are entitled to the limitation of liability imposed by the Merchant Shipping Act, 1894. *L. & S. W. Ry. Co. v. James*, 8 Ch. App. 241; 42 L. J. Ch. 337.

By sect. 502 of the Merchant Shipping Act, 1894, the owner of a British sea-going ship is not liable to make good any loss or damage happening without his actual fault or privity in the following cases; namely, (i) Where any goods are lost or damaged by fire on board the ship; or (ii) Where any gold, silver, diamonds, watches, jewels, or precious stones, the true nature and value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with, or secreting thereof.

By sect. 503 of the same Act, the liability of the owners of British or foreign ships is limited as follows where loss of life, personal injury, or damage to goods are caused without their actual fault or privity:—In respect of loss of life or personal



**Chap. XI.**  
**Art. 131.**

injury either alone or together with loss of, or damage to, vessels, goods, merchandise, or other things, the owners are not liable beyond an aggregate amount not exceeding fifteen pounds for each ton of their ship's tonnage, and in respect of loss of, or damage to, vessels, goods, merchandise, or other things whatsoever on board the ship, whether there be in addition loss of life or personal injury or not, they are not liable beyond an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage.

In the case of a steamship the tonnage is the gross tonnage without deduction for engine-room, and in the case of a sailing ship the tonnage is the registered tonnage.

A passenger by the defendants' ship received a ticket, which purported to be a receipt for the passage money. On the margin of the ticket were the words "Issued subject to the conditions printed on the back hereof," one of which was as follows: "It is hereby agreed by the person holding this ticket that the owners will not be liable in any way for the luggage of passengers unless the passengers choose to pay 1s. per cubic foot for luggage put under the owners' charge." A box, part of the passenger's luggage, containing money, jewellery, and papers, was, during the voyage, stolen, it was supposed by one of the crew. No extra payment had been made for such box. It was decided by Lord Russell of Killowen, C. J., (1) that the plaintiff could not recover as he had reasonable notice of the above conditions and was bound by the same; (2) that as regards that part of the claim which referred to the lost gold and silver goods, the defendants were, apart from any special contract, protected by sect. 502 of the Merchant Shipping Act, 1894. *Acton v. Castle Mail Packets Co.*, 73 L. T. 158.

The words "other things whatsoever on board the ship" in sect. 503 of the above Act include passengers' luggage. *The Stella*, [1900] P. 161; see note at p. 162 of the Report.

## CHAPTER XII.

## TRANSIT OF GOODS ON THE RAILWAY.

**132.** A railway company, in the absence of an express contract, are not bound to carry by the shortest route, but only by the route by which they profess to carry, provided that it is reasonable. *Hales v. L. & N. W. Ry. Co.*, 4 B. & S. 66; 32 L. J. Q. B. 292; *Myers v. L. & S. W. Ry. Co.*, L. R. 5 C. P. 1; 39 L. J. C. P. 57.

Ch. XII.  
Art. 132.

Under the Company's Risk Standard Conditions (Condition 4) the railway companies are to be liable for loss proved by the trader to have been caused by delay to, or detention of, or unreasonable deviation in the carriage of merchandise unless the company prove that the same arose without negligence on their part.

Under the Owner's Risk Standard Conditions (Condition 3) the companies are not to be liable, save in certain exceptional cases, for loss, damage, deviation, misdelivery, delay, or detention, except upon proof that the same arose from the wilful misconduct of the company or their servants.

See Appendix, Forms A. and B.

As to wilful misconduct, see *ante*, p. 154.

**133.** A railway company are under a duty to provide all proper and necessary means of carriage. This includes a proper vehicle and effective covering where necessary for the protection of the goods carried. *L. & N. W. Ry. Co. v. Richard Hudson & Sons, Ltd.*, [1920] A. C. 324; 89 L. J. K. B. 323.

Under the Company's Risk Standard Conditions (Condition 18) a railway company are not to be liable for loss, damage or delay

Ch. XII.  
Art. 133.

arising from a defect in a truck or sheet not belonging to or provided by them, and upon proof by the company that the same was not due to any negligence of their servants. See Appendix, Form A.

There is no similar provision in the Owner's Risk Standard Conditions, as under them the company in any case would be liable only for loss resulting from the wilful misconduct of their servants.

In *L. & N. W. Ry. Co. v. Richard Hudson*, *supra*, the consignors had themselves loaded into railway trucks and sheeted calico goods under a consignment note whereby the railway company acknowledged that the goods were received in good condition, and carriage was to be paid by the consignees (Hudson). Owing to defects in the sheet the goods were damaged by rain, and the House of Lords held that the railway company were liable as common carriers or under the consignment note.

See *Readhead v. Mid. Ry. Co.*, L. R. 2 Q. B. 412; 4 Q. B. 379; 38 L. J. Q. B. 169, in which the duty of a carrier to provide proper vehicles for passengers and goods respectively is dealt with; and *The Glenfruin*, 10 P. D. 103.

In *M'Manus v. Lanc. & York. Ry. Co.*, 4 H. & N. 327; 28 L. J. Ex. 353, the plaintiff had signed a contract relieving the company from liability for injury to live stock travelling in the company's vehicles. It was held nevertheless that he was entitled to recover, since he had employed the company to carry his horses safely and the company had used an improper vehicle for that purpose.

A railway company must take reasonable care to ascertain that "foreign" rolling stock coming on to their line is in a fit state to travel. *Richardson v. G. E. Ry. Co.*, 1 C. P. D. 342.

But a railway company are not under a duty to examine their wagons when handing them over to another railway company on a through transit, and are not liable in the absence of contract for injury occurring off their own line owing to a defect in one of their wagons. *Cal. Ry. Co. v. Mulholland*, [1898] A. C. 216.

**134.** The protection afforded to a railway company by any conditions limiting their liability will cease when once there has been a departure from the agreed route: *L. & N. W. Ry. Co. v. Neilson*, [1922] 2 A. C. 263; 91 L. J. K. B. 680; or when the goods are carried by a mode of conveyance which is different from that stipulated for under the contract of carriage. *Gunyon v. S. E. & C. Ry. Co.*, [1915] 2 K. B. 370; 84 L. J. K. B. 1212.

Ch. XII.  
Art. 134.

In *L. & N. W. Ry. Co. v. Neilson*, *supra*, theatrical luggage was accepted by the railway company for carriage from Llandudno to Bolton, *via* Manchester, upon condition that they were not to be liable for loss, damage, misconveyance . . . or detention except upon proof that the same arose from the wilful misconduct of their servants. The luggage was put into a special van labelled to Bolton, but the label came off, and on arriving at Manchester part of the luggage which bore old labels was sent to the places named on those labels, while the rest was put in the cloak-room. It was held by the House of Lords that the agreed transit was departed from at Manchester, and that the terms of the contract were no defence to a claim for damages due to delay in delivering the luggage at Bolton.

The result of this decision is to confirm the judgment of the Divisional Court in *Mallet v. G. E. Ry. Co.*, [1899] 1 Q. B. 309; 68 L. J. Q. B. 256, and to overrule that in *Foster v. G. W. Ry. Co.*, [1904] 2 K. B. 306; 73 L. J. K. B. 811. In the latter case, where certain perishable goods were unintentionally carried beyond the station at which they ought to have been transferred to another train, and as a result of the delay were delivered in a deteriorated condition, it had been held by a Divisional Court that notwithstanding this departure from the agreed route the company were protected by a condition which relieved them from liability except upon proof of wilful misconduct. The decision in *Foster's Case* is no longer a correct statement of the law.

166

ch.  
Art.

CH. XII. In *Gunyon v. S. E. & C. Ry. Co.*, [1915] 2 K. B. 370; 84  
 Art. 134. L. J. K. B. 1212, cherries were delivered to the railway company  
 for carriage by passenger train from Sittingbourne to Glasgow  
 at a reduced rate at owner's risk. They were carried for the  
 greater part of the transit by goods train instead of passenger  
 train, with the result that the journey occupied twenty-four hours  
 longer than it otherwise would have, and the fruit was injured.  
 It was held by a Divisional Court that carriage by passenger  
 train was of the essence of the contract, and that therefore, when  
 the fruit was transferred to another mode of conveyance, i.e., a  
 goods train, the condition as to owner's risk no longer applied, and  
 that the railway company were liable for the loss arising from the  
 breach of contract.

135. It is the duty of a railway company to do what they can by reasonable skill and care to avoid all perils, including the excepted perils. If, notwithstanding such skill and care, damage does occur from these perils, they are released from liability; but if their negligence or want of skill has brought on the peril, the damage is attributable to their breach of duty, and the exception does not aid them. *Phillips v. Clark*, 2 C. B. (N. S.) 156; 26 L. J. C. P. 168; *Gill v. Man. Sheff. & Lin. Ry. Co.*, L. R. 8 Q. B. 186; 42 L. J. Q. B. 89; *Steinman v. Angier Line*, [1891] 1 Q. B. 619; 60 L. J. Q. B. 425.

In the last mentioned case, Bowen, L. J., said, at p. 623 of the Law Reports, "The question of construction must be decided on the broad principle which has been so long and so constantly invoked in the interpretation of contracts with carriers by sea as well as by land, viz., that words of general exemption from liability are only intended (unless the words are clear) to relieve the carrier from liability where there has been no misconduct

or default on his part or that of his servants. . . . Even in cases within the exceptions the shipowner is not protected if default, or negligence on his part or that of his servants, has contributed to the loss." Ch. XII.  
Art. 134.

A railway company are not bound to use extraordinary efforts or incur extra expense in order to surmount obstructions caused by the act of God, as a fall of snow. *Briddon v. G. N. Ry. Co.*, 28 L. J. Ex. 51; 32 L. T. O. S. 94.

**136.** A railway company who receive goods for conveyance to a place beyond the limits of their own line (in the absence of any special contract to the contrary, and especially where they receive an entire payment for the whole journey) impliedly undertake the responsibility of the complete transit, and are, therefore, not discharged of their liability by handing over the goods to a second company for further conveyance, and are liable for a loss of or injury to the goods although the same may not have happened on their own line of railway. *Muschamp v. Lanc. & Preston Ry. Co.*, 8 M. & W. 421; 10 L. J. Ex. 460; *Scothorn v. South Staff. Ry. Co.*, 22 L. J. Ex. 121; *Bristol and Exeter Ry. Co. v. Collins*, 7 H. L. Ca. 194; 29 L. J. Ex. 41.

A railway company may, however, stipulate, at the time they receive the goods, that they will not be liable for the loss of or damage to goods destined to places beyond their own line of railway after they have delivered them over to another railway company in the usual course of further conveyance. *Aldridge v. Gl. W. Ry. Co.*, 15 C. B. (N. S.) 582; 33 L. J. C. P. 161; *Reader v. S. E. & C. and L. & N. W.*

Vol. XII.  
Art. 136.

*Ry. Cos.*, 38 Times L. R. 15. To claim exemption under such a condition, it must be proved that the goods passed into the custody of some other railway company before they were lost or injured. *Kent v. Midland Ry. Co.*, L. R. 10 Q. B. 1; 44 L. J. Q. B. 18; *Mahony v. Waterford, &c. Ry. Co.*, [1900] 2 Ir. R. 273.

A railway company receiving from another company goods consigned under a through booking are not liable for injury to such goods unless the injury is done while the goods are in their charge, or unless the company to whom the goods were first delivered are agents for the company who subsequently receive such goods. *Tuohy v. G. S. & W. Ry. Co.*, [1898] 2 Ir. R. 789.

The cases cited for the first proposition in this Article only decided that where there was nothing said there was *prima facie* a liability on the part of the company receiving the goods. This consequence ensues whether the carriage be or be not prepaid; or whether the goods, after being carried some distance on the company's railway, are transported for the remainder of the journey on the line of another company or companies; or are forwarded by coach or canal. *Hooper v. L. & N. W. Ry. Co.*, 50 L. J. Q. B. 103; *Burke v. S. E. Ry. Co.*, 5 C. P. D. 1; 49 L. J. C. P. 107. It makes no difference that the goods are directed by the sender to be sent part of the way by sea, and by a different route to that which would have been adopted if no such direction had been given. *Wilby v. West Cornwall Ry. Co.*, 27 L. J. Ex. 181.

"In our opinion, if a carrier contracts to convey to and deliver goods at a particular place, his duty at that place is precisely the same whether his own conveyance goes the entire way or stops short at an intermediate place, and the goods are conveyed on by

Ch. XII.  
Art. 138.

another carrier; and that this carrier or his clerk at the place of destination is the agent of the original carrier for all purposes connected with the conveyance and delivery and dealing with the goods to the same extent as his own clerk would have been at the place where his own conveyance stops with regard to goods to be there delivered." From the judgment of the Court in *Crouch v. G. W. Ry. Co.*, 26 L. J. Ex. 418, at p. 422.

In *Shepherd v. Bristol and Exeter Ry. Co.*, L. R. 3 Ex. 189; 37 L. J. Ex. 113, Martin, B., said: "When two railway companies are connected in business together, so that one of them receives cattle to be conveyed over the line of the other, I think there is but one contract, and that it is made between the customer and the receiving railway company, and that their liability is just the same as if they had been the owners of the railway the whole way upon which the cattle are to be conveyed. This I have understood to be the law ever since *Muschamp v. Lanc. & Pres. Ry. Co.*, and in my opinion it should be steadily adhered to."

Where goods are transferred from the original contracting railway company, their liability continues if such transfer is only accessory to the discharge of their own duty, or the terms of their own contract. *Machu v. L. & S. W. Ry. Co.*, 2 Ex. 415; 17 L. J. Ex. 271.

Where goods are accepted by a railway company to be carried to a place beyond their line, subject to special conditions, the conditions apply throughout the whole distance. *Brist. and Ex. Ry. Co. v. Collins*, 29 L. J. Ex. 41; 7 H. L. Ca. 194; *Hall v. N. E. Ry. Co.*, L. R. 10 Q. B. 437; 44 L. J. Q. B. 164-

In an Irish case cattle were conveyed from Dundalk to Liverpool by the D. Steam Packet Co., and from Liverpool to Cambridge by the joint lines of two railway companies who had no traffic agreement with the Packet Co., but who sent to the Packet Co. at Dundalk books of blank manifests, and who also employed canvassers at Dundalk to obtain traffic for their route. Two documents had been signed at Dundalk: (1) a note headed "Contract for freight and conveyance of live stock," signed by the



CH. XII.  
Art. 186.

plaintiff's agent; and (2) a manifest signed by the defendant companies' agent at Dundalk, and headed "Manifest of cattle booked through at Dundalk for which tickets have been issued at Edge Hill, Liverpool." At Liverpool a ticket was issued by the defendant companies' agent for the carriage of the cattle to Cambridge. The cattle having been injured during the railway journey from Liverpool to Cambridge, an action was brought in the Irish Courts against the English railway companies, who contended that there was a through contract with the Packet Co. and no contract with themselves, and that there was no evidence of agency on their behalf. The Irish Court of Exchequer held (their judgment being confirmed by the Court of Appeal) that as matter of law the contract with the Packet Co. was to carry to Liverpool only, and as an inference of fact that there was a contract between the defendants and the plaintiff made at Dundalk for the carriage from Liverpool to Cambridge. In arriving at this decision, Palles, C. B., especially referred to the case of *Bristol & Exeter Ry. Co. v. Collins*, 7 H. L. Ca. 194, 29 L. J. Ex. 41, and held that that case was not an authority in the case then before the Court. *Cumming v. G. N. & M. S. & L. Jt. Ry. Co.*, [1894] 2 Ir. R. 208.

Goods were received from a merchant in Manchester by the Lancashire and Yorkshire Ry. Co., under a through booking contract to be carried for the plaintiff and to be delivered to him in Limerick. The goods were carried from Manchester to Limerick, and there delivered to the plaintiff under an arrangement made between the various carrying companies concerned, by which the freight was divisible amongst them in proportion to the mileage traversed by each, but was to be collected by the defendants from the consignee. The goods were injured in transit, but there was nothing to show on what part of the journey the injury occurred. The Irish Queen's Bench Division and Court of Appeal held that there was no evidence that the through booking contract was made by the Lancashire and Yorkshire Railway as agents of the defendants, and that therefore, in

the absence of proof that the injury was done on the defendants' line, the defendants were not liable. *Tuohy v. G. S. & W. Ry. Co.*, [1898] 2 Ir. R. 789.

See also, in *Mahony v. Waterford, &c. Ry. Co.*, [1900] 2 Ir. R. 273.

In *Barratt v. G. N. Ry. Co.*, 52 W. R. 479; 20 T. L. R. 175, a firm of shippers had a contract with the N. E. Ry. Co., whereby all goods delivered by them to the company, to which alternative rates applied, were to be carried at the lower rate, the company and all other companies over whose lines the goods passed being relieved from all liability except in case of loss due to wilful misconduct. Certain shrubs belonging to the plaintiff were delivered by the shippers to the N. E. Co. for conveyance over part of their own line, and thence to a station on the line of the defendant company. While being carried by the defendant company the shrubs were destroyed by fire. The Divisional Court (Wills and Kennedy, JJ.) held, (1) that the shippers were the plaintiff's agents, and that their contract with the N. E. Co. bound him; (2) That there was evidence to show that the N. E. Co. were agents for the defendants, who were therefore relieved from liability under the terms of the contract.

The H. Ry. Co. received at I. a piano for conveyance to Kirkwall, in Orkney, under a consignment note, whereby the sender paid the railway rate to Aberdeen, and the consignee paid the steamer freight thence to Kirkwall. The company's own line ended at K., whence the case containing the piano was conveyed to Aberdeen by the G. N. of S. Ry. Co., who in turn handed it to a steamship company. Upon arrival at Kirkwall the piano was found to be damaged, but it was not proved when or where such damage occurred. The Inner House of the Court of Session decided that the railway company were liable for the amount of the injury sustained, on the ground that the consignment note was to be construed as a contract by the company to carry the goods from I. to Kirkwall, and that they had undertaken the responsibility for its transit to its destination. *Logan v. Highland Ry. Co.*, 2 F. 292.

CA. XII.  
Art. 137.

137. Where a railway company undertake to haul along their line trucks belonging to private traders, the extent of their obligation is to use reasonable care and diligence. *Watson v. North British Ry. Co.*, 3 Sess. Ca. (4th Series) 637.

In a later Scottish case a railway company conveyed traders' trucks, containing coal, over part of their line, and after delivery of the coal were bringing the trucks back empty to the colliery whence they had come. The only charge made was a rate of 1s. 7½d. per ton for the carriage of the coal, whereas the rate for the carriage of coal in trucks belonging to the company was 2s. per ton. During the return journey some of the trucks were destroyed through an accident caused by the latent defects in a truck of another trader which formed part of the same train. The Court held that the railway company while hauling the empty trucks back to the colliery were not liable as common carriers for the safe delivery of the trucks. *Barr & Sons v. Caledonian Ry. Co.*, 18 Sess. Ca. (4th Series) 139.

Where merchandise is conveyed in a trader's truck, the company shall not make any charge in respect of the return of the truck empty, provided that the truck is returned empty from the consignee and station or siding to whom and to which it was consigned, loaded direct to the consignor and station or siding from whom and whence it was so consigned, and where a trader forwards an empty truck to any station or siding for the purpose of being loaded with merchandise, the company shall make no charge in respect of the forwarding of such empty truck, provided the truck is returned to it loaded for conveyance direct to the consignor and station or siding from whom and whence it was so forwarded. Railways Act, 1921, Fifth Schedule, c. 7.

As to demurrage charges for detention of traders' trucks, see p. 274.

138. A railway company are not to be considered as gratuitous bailees, but as common carriers, in

respect of empty packages which have already traversed their line of railway when full, and for the return carriage of which, when empty, it is the custom not to make any further charge. *Aldridge v. G. W. Ry. Co.*, 15 C. B. (N. S.) 582; 33 L. J. C. P. 161. Ch. XII.  
Art. 120.

In the above case, a condition that "the company will not be answerable for the loss, or detention of, or damage to wrappers or packages of any description charged by the company as 'empties,'" was held not to be a just and reasonable condition within the meaning of sect. 7 of the Railway and Canal Traffic Act, 1854. Erle, C. J., said: "We may observe that we are by no means prepared to accede to the suggestion that, because no charge is made for the return of empty packages, therefore the company necessarily convey them on their line gratuitously. The company may justly be considered as having had the carriage of the empties prepaid in the shape of the previous payment for the carriage of the same packages when full, including an obligation on the railway to carry the empties back without further charge."

**139.** Where the transit is interrupted, a railway company may sell the goods as agents of necessity, provided that a real necessity for such sale exists and it is not commercially possible to obtain instructions from the owner of the goods. *Sims v. Midland Ry. Co.*, [1913] 1 K. B. 103; 82 L. J. K. B. 67; *Springer v. G. W. Ry. Co.*, [1921] 1 K. B. 257; 89 L. J. K. B. 1010; *Reader v. S. E. & C. and L. & N. W. Ry. Cos.*, 38 Times L. R. 14.

The necessity for sale usually arises in the case of perishable traffic. In *Reader's Case*, *supra*, the consignment note incorporated the general conditions of the receiving railway company, one of which was that perishable articles not delivered in con-

GA. XII.  
Art. 139.

sequence of a strike might be sold by the company without notice to the sender or consignee. Certain apples consigned from a place on the S. E. & C. line to a destination on the L. & N. W. line were held up by a general railway strike, and were sold without notice as to part by the first-named company and as to part by the second company.

In an action brought by the sender Rowlett, J., held that both companies were protected by the above condition, that the power to sell without notice was a reasonable condition, and that apples were "perishable" goods within the condition, the word "perishable" meaning "articles which inherently in their own nature will decay and perish soon."

The standard conditions of carriage empower a railway company to sell perishable merchandise when (a) refused by the consignee, (b) left at the station of destination for an unreasonable time, (c) improperly addressed or labelled, (d) held up by riots, strikes, and civil commotions, (e) unavoidably held up by flood or landslip, provided that where telegraphic or telephonic communication is possible notice shall first be given to the sender in cases (a) and (c), and to the consignee in cases (b) and (e). See *post*, Appendix, Form A., Company's Risk (Condition 15), and Form B., Owner's Risk (Condition 14).

The standard conditions also enable the company to sell non-perishable goods under certain conditions. See Appendix, Form A. (Condition 16), and Form B. (Condition 15).

140. A carrying railway company who accept traffic for carriage by their trains are under an obligation to carry the same safely apart from their liability under any contract. *Austin v. G. W. Ry. Co.*, L. R. 2 Q. B. 442; *Foulkes v. Met. Dist. Ry. Co.*, 5 C. P. D. 157; 49 L. J. C. P. 361; *Hooper v. L. & N. W. Ry. Co.*, 50 L. J. C. P. 103.

The first two of these cases relate to passenger traffic.

In *Hooper's Case* Lindley, J., said at p. 105: "The plaintiff, Ch. XII.  
Art. 140. no doubt, entered into an express contract with the Great Western Railway Company to carry him and his luggage to Euston; at Birmingham it was transferred into the van of the defendant company. Whether there would be an implied contract with the defendant company may be a question of difficulty, but, as a matter of fact, the portmanteau was lawfully in their charge, and the fact of its not being forthcoming at Euston involves the default of some one of the defendants' servants. The defendant company, having received the portmanteau, are responsible for its loss, in accordance with the principle of *Foulkes v. Met. Dist. Ry. Co.*"; and Denman, J., also said at p. 105: "The doctrine laid down in *Foulkes v. The Met. Ry. Co.*, namely, that there is a duty owing by a railway company towards the passengers they are carrying, would apply to goods."

But where traffic is carried upon a train of a company without their consent they owe no duty and incur no liability with respect to it, except a duty not to wilfully injure it. See *Grand Trunk Ry. Co. v. Barnett*, [1911] A. C. 361; 80 L. J. P. C. 117.

141. A railway company will be estopped from setting up the illegality of their acts in defence to an action by a person who has been damaged by such acts, even though such person so damaged might set up the illegality against the company if it would assist his case. *Doolan v. Midland Ry. Co.*, 2 App. Cas. 792, at p. 806; 37 L. T. 317.

In that case a railway company was guilty of an illegality by working steamboats, not being authorised by law to work them; and it was held, that the company could not set up the illegality in answer to a claim for damages arising out of the working of the steamboats.

The special Act of a railway company is to be construed strictly against the company, and liberally in favour of the public.

CH. XII. *Parker v. G. W. Ry. Co.*, 13 L. J. C. P. 105; 7 M. & G. 253. In this case Tindal, C. J., said: "The language of this Act of Parliament is to be treated as the language of the promoters of it; they ask the legislature to confer great privileges upon them, and profess to give the public certain advantages in return. Acts passed under such circumstances should be construed strictly against the parties obtaining them, but liberally in favour of the public."

Where an Act of Parliament confers upon a landowner a private right, creating a burden upon a railway, and restraining the directors from regulating the traffic so as best to accommodate the public, it must be construed strictly. *Turner v. L. & S. W. Ry Co.*, L. R. 17 Eq. 561; 43 L. J. Ch. 430.

See also *Pryce v. Monmouthshire Ry. Co.*, 4 App. Cas. 197; 49 L. J. Q. B. 130.

**142.** The Standard Conditions of Carriage provide that the transit is to be deemed to be ended as follows: See Form A., Company's Risk Conditions (No. 11), and Form B., Owner's Risk Conditions (No. 10). See Appendix, *post*.

The transit shall (unless otherwise previously determined) be deemed to be at an end—

- (a) In the cases of merchandise to be carted by the company when it is tendered at the usual place of delivery as defined by Condition 9 hereof within the customary cartage hours of the delivery district, or at such other times as may be agreed between the company and the trader.
- (b) In the case of merchandise not to be carted by the company or to be retained by the company awaiting order, at the expiration of one clear day after notice of arrival is given in writing (or by telephone if so agreed in

writing) to or at the address of the consignee or, where the address of the consignee is not known, to or at the address of the sender, or where the addresses of both the sender and the consignee are not known at the expiration of one clear day after the arrival of the merchandise at the place to which it is consigned.

CH. XII.  
Art. 144.

(c) In the case of merchandise to be carried to a siding not belonging to the company---

(i) When it is delivered upon the siding or at the place where, by arrangement, the trader takes delivery; or

(ii) If the consignee is unable through no fault of the company, or is unwilling to take delivery, at the expiration of one clear day after the receipt by the consignee of notice in writing (or by telephone if so agreed in writing) that the company are ready and willing to deliver; or

(iii) If the consignee is prevented from taking delivery through the act or omission of the company when the cause which has prevented him from taking delivery has been removed and the merchandise is delivered in accordance with paragraph (c) (i) or on the expiration of one clear day after receipt by the consignee of notice in writing (or by telephone if so agreed in writing) that the company are ready and willing to deliver.



## CHAPTER XIII.

## DELIVERY BY THE RAILWAY COMPANY.

Ch. XIII.  
Art. 143.

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143. In the absence of special agreement there is no implied contract on the part of a railway company to deliver with punctuality, but the contract is to carry and deliver within a time which is reasonable, having regard to all the circumstances, and the railway company are not responsible for the consequences of delay arising from causes beyond their control. *Taylor v. G. N. Ry. Co.*, L. R. 1 C. P. 385; 35 L. J. C. P. 210.

A contract by a railway company to carry goods by a given train which ordinarily arrives at a particular place at a particular hour, does not amount to a warranty that it will so arrive, although the company's servants be informed that the object of the sender requires that it should so arrive. *Lord v. Midland Ry. Co.*, L. R. 2 C. P. 339; 36 L. J. C. P. 170.

Where the ordinary traffic arrangements are on a single occasion altered there is evidence of unreasonable delay. *Wren v. Eastern Counties Ry. Co.*, 1 L. T. (N. S.) 5. A railway company are not bound to give public notice of the discontinuance of a train where no time tables are published: and they are not liable for delay to traffic which is caused by such train being discontinued, even though the consignor had on a previous occasion forwarded traffic by such train. *Bollands v. M. S. & I. Ry. Co.*, 15 Ir. C. L. Rep. 560.

Where no time tables are published, the duty of inquiry is on the consignor. *Tobin v. L. & N. W. Ry. Co.*, [1895] 2 Ir. R. 22. Ga. III.  
Art. 149.

If a train is late, it lies upon the railway company to show that the delay is not unreasonable. *Le Blanche v. L. & N. W. Ry. Co.*, 1 C. P. D. at p. 312; 45 L. J. C. P. 521; *Roberts v. Mid. Ry. Co.*, 25 W. R. 323.

144. A railway company are liable for an unreasonable delay in the delivery of the goods, and the measure of damages is to be based upon the value of the goods at the place and time at which they ought to have been delivered, and not upon their value at the place where the company received them. *Rice v. Baxendale*, 7 H. & N. 96; 30 L. J. Ex. 371.

Damages that cannot reasonably be contemplated by both the parties as the natural consequences of a default in delivery are not recoverable. *Hadley v. Baxendale*, 23 L. J. Ex. 179; 9 Exch. 341. Therefore, loss of profit which might have been earned by means of the article carried either alone or in conjunction with other things cannot be recovered as an ordinary consequence of delay. *Hadley v. Baxendale*, *supra*; *Den of Ogil Co. v. Caledonian Ry. Co.*, 5 Fraser, 99.

In the same way damages cannot be recovered by a trader for the loss of an exceptionally large profit occasioned by a delay in the delivery of goods by a railway company unless the company (a) have had notice that the trader has contracted to deliver within a fixed time, and (b) accept liability for the special loss resulting from late delivery. *Horne v. Mid. Ry.*

Ch. XIII.  
Art. 144.

*Co.*, L. R. 7 C. P. 583; 8 C. P. 131; 42 L. J. C. P. 59.

The standard conditions of carriage provide as follows:—

“The company shall not in any case be liable for

“(a) loss of a particular market, whether held daily or at intervals; or

“(b) indirect or consequential damages; or

“(c) subject to these conditions, loss, damage or delay proved by the company to have been caused by or to have arisen from

“(i) insufficient or improper packing; or

“(ii) riots, civil commotions, strikes, lockouts, stoppage, or restraint of labour from whatever cause, whether partial or general; or

“(iii) consignee not taking or accepting delivery within a reasonable time.”

See *post*, Appendix, Company's Risk Conditions, Form A (No. 17), and Owner's Risk Conditions, Form B (No. 16).

In the case of goods of which the price varies with the season a trader may recover damages for losing the season for selling owing to delay in delivery. *Wilson v. Lanc. & York. Ry. Co.*, 9 C. B. (N. S.) 632; 30 L. J. C. P. 232; *Schulze v. G. E. Ry. Co.*, 19 Q. B. D. 30; 56 L. J. Q. B. 442.

“Whenever either the object of the sender is specially brought to the notice of the carrier, or circumstances are known to the carrier from which the object ought in reason to be inferred, so that the object may be taken to have been within the contemplation of both parties, damages may be recovered for the natural consequences of the failure of that object.” Per Cockburn, C. J., in *Simpson v. L. & N. W. Ry. Co.*, 1 Q. B. D. at p. 277; 45 L. J. Q. B. 182.

In *Horne v. Mid. Ry. Co.*, L. R. 7 C. P. 583; 8 C. P. 131; 42 L. J. C. P. 59, the plaintiffs, who were shoe manufacturers at Kettering, had contracted to supply army shoes at 4s. per pair

to certain contractors in London, the last day for delivery being ~~3rd~~ <sup>Feb. 1871</sup> 3rd February, 1871. The shoes were delivered to the railway company at Kettering in time for delivery to the consignees in London at the appointed date, and the station master at Kettering was at the same time informed that the plaintiffs were under a contract to deliver to the consignees by that date. The goods were not tendered to the consignees until 4th February, and were then refused. The result was that the plaintiffs were able to obtain only 2s. 9d. per pair for the shoes instead of the contract price of 4s. In an action to recover the difference, which was brought against the railway company, the Exchequer Chamber by a majority held that, in the absence of notice as to the exceptional nature of the contract into which the plaintiffs had entered, the railway company were liable only for the difference between the market price at the time when the goods were delivered and the market price at the time when they ought to have been delivered, which, on the facts, meant nominal damages only. The majority of the judges also thought that, in view of the fact that the railway company were bound to accept the goods, they would not have been liable for the loss of the large profit even if they had had full notice on this point unless they had expressly agreed to accept that liability.

The value of the goods at the place and time appointed for delivery is ascertained by the market price, if there be a market for such goods; but if there be no market price, the value at the time and place must be ascertained as a matter of fact by the circumstances; thus in the case of goods intended for commerce the value at the place of destination, where there is no market for such goods, may be estimated to include a reasonable profit to the importer beyond the cost price and cost of carriage. *O'Hanlon v. G. W. Ry. Co.*, 6 B. & S. 484; 34 L. J. Q. B. 151.

Therefore, the consignee may recover damages for a fall in the market price during the interval of delay. *Collard v. S. E. Ry. Co.*, 7 H. & N. 79; 30 L. J. Ex. 393. In that case the defendants had no notice that the goods were sent for sale;

CH. XIII. Martin, B., said: "It was proved that if they had been brought to market (on the proper day) they would have produced a certain sum, but when they were brought to market, at a future day, we find the market price had fallen, and the articles had fallen in value by an amount of 65%. If that is not a direct, immediate, necessary and essential consequence of the breach of contract by the defendants, I cannot understand what is"; therefore the plaintiff was held entitled to recover as damages the difference between the market value on the day the goods ought to have been brought to market and the day on which they were afterwards brought to market. See also *Simpson v. L. & N. W. Ry. Co.*, 45 L. J. Q. B. 182; 1 Q. B. D. 274.

In *Wilson v. Lanc. & York. Ry. Co.*, 9 C. B. (N. S.) 632; 30 L. J. C. P. 232, Willes, J., said: "The deterioration in value of the goods in consequence of their arriving at a time when they were less in demand and less capable of being applied to an immediate use, is the natural and legal consequence of the delay, for which the carriers are answerable."

Two consignments of fish for transport by special train and tidal boat from London *via* Folkestone to Boulogne were delivered to a railway company, who advertised special trains and boats at special rates, subject to the conditions contained in their tables. One of these conditions was that the company would not be answerable for loss occasioned by the trains or boats not starting or arriving at the time specified; and another, that the boats started "wind, weather, and tide permitting." In each case, on arrival at Folkestone, it was found that it was not prudent to load the fish on the tidal boat, owing to the state of the weather, and the fish had to be sent in the cargo boat, in consequence of which the Paris train at Boulogne was missed, the fish delayed for twenty-four hours, and deteriorated, besides losing the market; it was held that there was no absolute guaranty they would go by that particular train and boat, but that it was for the jury to say whether, under the circumstances, the railway company had been guilty of negligence or whether they had substantially fulfilled

their contract, and also that, in estimating the damages, the loss of the market in Paris by the non-arrival of the fish at Boulogne in time to catch the train for Paris was not to be taken into account. *Harves & Son v. S. E. Ry. Co.*, 54 L. J. Q. B. 174; 52 L. T. 514. Ch. XIII.  
Art. 144.

A manufacturer forwarded a bale of cloth by railway consigned to a shipping agent at Grimsby, who was to ship it for Germany. On arrival at Grimsby the package was found to be frayed, and some slight damage done to the cloth. The shipping agent refused to take delivery, being of opinion that the goods could not be safely forwarded in their damaged package. The railway company thereupon returned them to the manufacturer, who repacked them and forwarded them to Germany. On arrival there they were rejected as being too late. The manufacturer having sued the railway company for damages for loss of market, it was held by the Court of Session that the loss of market was the direct result of the damage done to the package by the railway company, who were therefore liable for it. *Keddie, Gordon & Co. v. North British Ry. Co.*, 14 Sess. Ca. (4th Ser.) 233.

As regards perishable goods, however, destined for a particular market, there may, in certain circumstances, considering the facilities of railway traffic, the obligations imposed by the Traffic Act, 1854, and the certainty with which times of transit may now be calculated, arise an implied obligation to deliver in time for that particular market. *Bates v. Cameron & Co.*, 28 Jur. 77; *Finlay v. N. Brit. Ry. Co.*, 8 Sess. Ca. (3rd Ser.) 959; per the Lord President, 970. Such matters, however, are generally made the subject of special contract. See Standard Conditions of Carriage, Appendix, *post*.

In the case of *The Notting Hill*, 9 P. D. 105, it was held that loss of market was too remote a consequence of a collision to be considered as an element of damage.

In *Candy v. Midland Ry. Co.*, 38 L. T. 226, it was held that merely labelling a box "Travellers' goods, deliver immediately," was not sufficient notice to in any way affect the company with

Ch. XIII. special notice of the facts, so as to make special damages recover-  
Art. 144. able against them.

In *Jameson v. Midland Ry. Co.*, 50 L. T. 426, the plaintiff delivered a parcel at the receiving office of the defendants in London, addressed to "W. H. Moore & Co., Stand 23, Show-ground, Lichfield, Staffordshire, van train." Nothing was said by the person who delivered the parcel at the receiving office as to the purpose for which it was being sent to Lichfield, or to draw attention to the label; and it was held that the label was sufficient notice to the defendants that the goods were being sent to a show, and that the plaintiffs were entitled to recover damages for loss of profits and expenses incurred by the goods being delayed and not delivered at Lichfield in time for the show.

In *Woodger v. G. W. Ry. Co.*, L. R. 2 C. P. 318; 36 L. J. C. P. 177, a commercial traveller delivered a parcel of samples to the railway company to be carried to A., but did not state the contents of the parcel or the purpose for which it was required. By the negligence of the railway company the parcel was delayed, and the traveller spent three days at A. unemployed, waiting for it. In an action for negligence it was held that the hotel expenses of the traveller during the time he was waiting for the parcel could not be recovered as damages, being too remote.

In *Hales v. L. & N. W. Ry. Co.*, 4 B. & S. 66; 32 L. J. Q. B. 292, expenses incurred in inquiring for goods were held recoverable, but not loss of hire caused by their not arriving by the day for which they had been hired.

In *Redmayne v. G. W. Ry. Co.*, L. R. 1 C. P. 329, the plaintiff sent goods from Manchester by the defendants' railway to his traveller at Cardiff; the delivery of the goods was, through the negligence of the defendants, delayed until after the traveller had left Cardiff, and the plaintiff, in consequence, lost the profits which he would have derived from a sale at Cardiff; and it was held that, in the absence of notice to the defendants of the object for which the goods were sent, the plaintiff could not recover from them such profits as damages for the delay.

A railway company having negligently failed to deliver a parcel which, to the knowledge of the company, contained samples, until the season at which the samples could be used for procuring orders had passed, so that the samples had become valueless, are liable in damages for the value of the samples at the time when they should have been delivered. *Schulze v. G. E. Ry. Co.*, 19 Q. B. D. 30; 56 L. J. Q. B. 442. CH. XIII.  
ART. 144.

In the Scottish case of *Den of Ogil Co. v. Caledonian Ry. Co.*, 5 Fraser, 99, a casting which was intended to replace a damaged part of the engines of a ship was delivered to the railway company with notice that delay in delivery would cause the detention of the ship, but no information was given to them as to the size of the ship or that the casting was part of the machinery of the ship. There was a delay of three to four days in delivery. The Court of Session held that the railway company were liable for the expenses incurred through the detention of the ship, but not for the loss of profit thereby caused.

Goods consigned to B. & Co., which were carried by a railway company at the owner's risk rate, were delivered to another firm, and, on being found, were tendered to the consignees, who refused to accept them. It was held that, in the absence of evidence on the part of the plaintiffs as to the cause of the mis-delivery, it did not amount to wilful misconduct so as to render the defendants liable for the delay. *Stevens v. G. W. Ry. Co.*, 52 L. T. 324.

Wherever the owner or consignor represents the goods to be of a particular value, he will not be permitted, in case of a loss, to recover from the carrier any amount beyond that value. *Batson v. Donovan*, 4 B. & A. 21; *Riley v. Horne*, 5 Bing. 217.

In Scotland, where a machine worth 100*l.* was damaged while in transit on the railway, and evidence was given to show that the damaged parts could be repaired at a cost of from 16*l.* to 30*l.*, although it was uncertain whether the machine would then work properly, the defendant railway companies were held liable to pay



Ch. XIII. the consignee the full value of such machine. *Dick v. East Coast*  
 Art. 144. *Rys.*, 4 Fraser, 178.

**145.** The expression "non-delivery of any consignment" means the failure to deliver the entire consignment of goods included in the consignment note and not a non-delivery of some of the items forming part of such entire consignment. *G. W. Ry. Co. v. Wills*, [1917] A. C. 148; 86 L. J. K. B. 641.

In the above case a consignment of carcases was delivered to the railway company for carriage upon the terms of an owner's risk note, whereby the company were freed from liability for loss unless due to wilful misconduct, but accepted liability for "non-delivery of any package or consignment." Upon arrival a few of the carcases were missing. The House of Lords with some hesitation held that non-delivery meant non-delivery of the whole as contrasted with short delivery, and that under the terms of the note the railway company were not liable.

**146.** A station-master is the agent for the railway company to deliver goods, and if he assents to some mode of delivery other than the usual one he will bind the company thereby. *Holmes v. N. E. Ry. Co.*, L. R. 4 Ex. 254; 6 Ex. 123; 40 L. J. Ex. 121; *Wright v. L. & N. W. Ry. Co.*, L. R. 10 Q. B. 298; 1 Q. B. D. 252; 45 L. J. Q. B. 570.

If goods are brought by mistake and without right, and delivered at a railway station, the station-master has no right to detain them, after demand by the owner and the tender of any reasonable expenses incurred in respect of them. *Rooke v. Mid. Ry. Co.*, 16 Jur. 1069.

In the last-mentioned case the station-master said, in answer to a demand for some goods: "The goods were brought to our

station by an intermediate line, which has no right to send goods Ch. XII. here, and I shall send them back"; and it was held that the Art. 148. railway company were liable for the conversion of the goods.

But in order to fix the company, it must be shown that the wrongful act was done by some person acting for them within the scope of his authority. *Glover v. L. & N. W. Ry. Co.*, 5 Ex. 66.

147. Where goods are delivered to a railway company, to be delivered at a particular place, the owner of the goods may countermand the direction at any moment of their transit, and require the railway company to deliver at a different destination to that originally named; and in such a case the railway company are bound to do so, and are liable for a loss occasioned by their not obeying the instructions given to them. The owner may demand back his goods on payment of the carriage to their original destination, unless, perhaps, when the unpacking and re-delivering them would be productive of much inconvenience. *Scothorn v. South Staffordshire Ry. Co.*, 8 Exch. 341; 22 L. J. Ex. 121; see also *Reg. v. Frere*, 24 L. J. M. C. 68.

A railway company are justified in assuming (in the absence of any notice to the contrary) that the consignee is the owner of the goods, and the consignor is his agent for the purpose of entering into the contract of carriage: *Cork Distilleries Co. v. G. S. & W. Ry. Co.*, L. R. 7 H. L. 269; and therefore, subject to such notice, the railway company may deliver goods at any place required by the consignee. *L. & N. W. Ry. Co. v. Bartlett*, 7 H. & N. 400; 31 L. J.

CH. XLII.  
ART. 147.

Ex. 92. The contract of the railway company is to deliver at the place to which the goods are addressed unless the consignee otherwise requires.

In the case of *Scothorn v. South Staffordshire Ry. Co.*, *supra*, the plaintiff delivered at a station of that company certain goods addressed to the East India Docks, London, and paid one sum for their carriage the whole distance. By the practice of that railway company, all goods delivered at that station for London were forwarded on their own line to Birmingham, and from there by the London and North Western Railway. Before the goods in question arrived in London, the plaintiff directed a clerk at the London station of the latter company to forward them to another place, which the clerk promised to do. The goods were, however, delivered according to the original address, and thereby lost, and it was held that the South Staffordshire Railway Company were responsible for the loss.

Platt, B., at 22 L. J. Ex. p. 123, said: "If a carrier undertakes to carry goods from A. to B., he does so subject to a right in the owner to countermand the direction at any point of the journey, and though he may be bound to pay the carrier for his trouble, yet the latter has no right to carry them further against the will of the owner of the goods."

Where goods were delivered to a railway company to be conveyed to the Customs Warehouse, Limerick, with the added words "for Messrs. J. Stein & Co., Limerick Station," it was held that as the latter firm appeared to be the consignees they might demand them of the railway company at another place; and if on such demand, and on receiving payment for the carriage, the railway company (who had not received from the consignor any special communication on the subject of the place of delivery) delivered them up to the consignees, they would not be responsible to the consignor for any damages which arose to the consignor from such delivery. See *Cork Distilleries Co. v. Gt. Southern & Western Ry. Co.*, L. R. 7 H. L. 269.

It was held in *L. & N. W. Ry. Co. v. Bartlett*, 7 H. & N. 400; 31 L. J. Ex. 92, that, although the consignor of goods directs a carrier to deliver them to the consignee at a particular place, the carrier may deliver them wherever the consignee requires. But from the last-mentioned decision in the House of Lords, it appears that if there had been a special contract as to the place of delivery between the consignor and the carrier it would have been different. See also *Butterworth v. Brownlow*, 34 L. J. C. P. 266. CA. XIII.  
Art. 187.

If one railway company receive goods for a place off their railway and carry part of the way only, transferring them to another company to carry to the place of destination, the latter company are agents of the first company for receiving a notice of countermand; and if they receive such notice and pay no attention to it, the first company are responsible for the neglect. *Scothorn v. South Staff. Ry. Co.*, 8 Exch. 341; 22 L. J. Ex. 121.

148. If the consignee of the goods, with the assent of the railway company, is engaged for the convenience of both parties in taking delivery in a particular way, the railway company are bound to see that while he is so engaged he is not injured through the negligence of themselves or their servants in the performance of their contract. *Wright v. L. & N. W. Ry. Co.*, 1 Q. B. D. 252; 45 L. J. Q. B. 570.

In that case the plaintiff sent a heifer (which was put into a horse-box) by defendants' railway to their P. station. On the arrival of the train at the station, there only being two porters available the plaintiff, in order to save delay assisted in shunting the horse-box, and while so assisting he was injured by another train being negligently started. There was evidence that the station-master knew that the plaintiff was assisting in the shunting, and assented to his doing so. The Court of Appeal held

CA. XIII. that the plaintiff was not a mere volunteer, but was on the defen-  
Art. 148. dants' premises with their consent for the purpose of expediting the delivery of his own goods, and the defendants were liable to him for the negligence of their servants, according to the principle of *Holmes v. N. E. Ry. Co.*, L. R. 6 Ex. 123; 40 L. J. Ex. 121.

And see *Norman v. G. W. Ry. Co.*, [1915] 1 K. B. 584; 84 L. J. K. B. 598.

**149.** When goods are delivered by a railway company at the proper place, and at the proper time, the consignee ought to examine them and ascertain whether they are in good order, and if he does not intimate objection, it will be presumed that they were delivered in good order. *Stewart v. North British Ry. Co.*, 5 Sess. Ca. (4th Ser.) 426.

Under the Standard Conditions of Carriage (Company's Risk, No. 8; Owner's Risk, No. 7) a railway company are not to be liable (a) for loss from a package or unpacked consignment unless notice is given them as therein provided within three days, and a written claim be made within seven days after the termination of the transit; and (b) for non-delivery of an entire consignment or of a separate package forming part of a consignment unless notice is given and a written claim made within fourteen and twenty-eight days respectively. The Rates Tribunal has power to extend these times. See *post*, Appendix.

**150.** It is ordinarily the duty of a railway company to give notice to the consignee of the arrival of goods, at all events when delivery is to be taken at a station of the company. *Neston Colliery Co. v. L. & N. W. Ry. Co. and G. W. Ry. Co.*, 4 Ry. & Can. Ca. 257.

If the consignee refuses to accept the goods or cannot be found, the railway company must act reasonably. There is no absolute rule of law on the subject, but in most cases the proper course is for the company to give notice of non-delivery to the consignor and to wait his instructions. *Hudson v. Bazendale*, 27 L. J. Ex. 93; 2 H. & N. 575; *Matzenburg v. Highland Ry. Co.*, 7 Sess. Ca. (3rd Ser.) 919. CH. XIII.  
ART. 193.

The standard conditions of carriage provide as follows:—

“The company shall in every case when merchandise is consigned to a station (which in this condition includes a siding provided by the company for general public use) and is not to be delivered by the company's road vehicle, or barge, or by truck alongside ship, give notice in writing (or by telephone, if so agreed in writing) of arrival to the consignee, or where his address is not known, or he refuses to take delivery, to the sender where it is reasonable and practicable so to do.” See Appendix, *post*, Company's Risk Conditions (No. 10); Owner's Risk Conditions (No. 9).

As to whether a railway company hold the goods as carriers or warehousemen during that reasonable time, see *post*, p. 194.

The mere fact that the goods are at their intended destination and not in course of transit, but in the carrier's warehouse, is not alone sufficient to change his responsibility to that of a warehouseman. *Hyde v. Trent, &c. Nav. Co.*, 5 T. R. 389.

For the purpose of imposing a liability for the payment of wagon demurrage charges, the receipt and acceptance of an advice note by a nominee of the original consignee is sufficient to establish privity of contract between the railway company and such nominee. *L. & Y. Ry. Co. v. Swann*, [1916] 1 K. B. 263; 85 L. J. K. B. 694; see *post*, p. 295.

Ch. XIII.  
Art. 151.

151. When goods have arrived at the end of the transit the railway company are bound to keep them a reasonable time for the consignee to claim or fetch them in, during which time their liability as carriers continues. After a reasonable time this extraordinary liability ceases, and they become warehousemen or mere bailees of the goods for hire. *Crouch v. G. W. Ry. Co.*, 26 L. J. Ex. 418; *Chapman v. G. W. Ry. Co.*, 5 Q. B. D. 278; 49 L. J. Q. B. 420; *In re Webb*, 8 Taun. 443; *Manchester, &c. Federation of Coal Traders v. L. & Y. Ry. Co.*, 10 Ry. & Ca. Ca. 127.

While goods are in the possession of the railway company as mere bailees, they are bound to take proper means for their preservation. *Giles v. Taff Vale Ry. Co.*, 2 E. & B. 823; *Mitchell v. L. & Y. Ry. Co.*, L. R. 10 Q. B. 256; 44 L. J. Q. B. 107

Where the consignee makes default in receiving goods, the railway company are entitled to recover from him the expenses reasonably incurred in taking care of the goods. *G. N. Ry. Co. v. Swaffield*, L. R. 9 Ex. 132; 43 L. J. Ex. 89.

The standard conditions of carriage provide as follows. -

"After the termination of the transit . . . unless otherwise agreed in writing, the company will hold the merchandise as warehousemen, subject to the usual charges and to the condition that they will not be liable for any loss, misdelivery or detention of or damage to

"(i) merchandise not properly protected by packing, except upon proof that such loss, misdelivery, detention or damage arose from the negligence of the company's servants and would have been suffered if the merchandise had been properly protected by packing; or

"(ii) (a) articles or property of the descriptions mentioned in the Carriers Act, 1830, as amended by subsequent Acts; or Ch. XIII:  
Art. 151.

"(b) merchandise which has arrived at the destination station and for which the company give notice that they have not suitable accommodation,

by whomsoever such loss, misdelivery, detention or damage may be caused, and whether occasioned by neglect or otherwise.

"Provided that this condition shall not relieve the company from any liability they might otherwise incur under these conditions in the unloading of the merchandise."

See Company's Risk Conditions (No. 12), and Owner's Risk Conditions (No. 11), Appendix, *post*.

"As to 'termination of transit,' " see above sets of Conditions, Nos. 11 and 10 respectively.

In *Mitchell v. L. & Y. Ry. Co.*, L. R. 10 Q. B. 256; 44 L. J. Q. B. 107, the plaintiff was informed by the railway company that certain bags of flax had arrived at one of their stations and were "held by the company, not as carriers, but as warehousemen at owner's sole risk." Most of the bags were allowed to remain at the station for over two months, and were injured by being stacked in the open on wet ground. It was held that, notwithstanding the blameable inaction on the part of the plaintiff, the railway company were liable to take reasonable care as bailees for reward, since they might have charged warehouse rent, and had having failed to do so they were liable for the damage sustained by the goods.

In *G. N. Ry. Co. v. Swaffield*, L. R. 9 Ex. 132; 43 L. J. Ex. 19, the defendant sent a horse by railway consigned to himself at a station on the line, and paid the fare. When the horse arrived at the station there was no one on the defendant's behalf to receive it, and the railway company therefore placed it with a livery stable keeper; and the railway company were held to be



CH. XIII. entitled as agents of necessity to recover from the defendant  
Art. 181. the reasonable charges which they had paid to the stable keeper.

What will amount to reasonable time is a question of fact and not of law, and must depend on the circumstances of the particular case. *Chapman v. G. W. Ry. Co.*, *post*, p. 198. Specially directing goods "to be left till called for" does not affect the liability of the railway company, either as carriers or warehousemen. *Ibidem*.

In *Ivens v. G. W. Ry. Co.*, 53 J. P. 148, the plaintiff had consigned goods to a station on the defendants' line to his own order. Upon arrival the following advice note was sent to the plaintiff: "The undermentioned goods consigned to you have arrived at this station. I will thank you for instructions as to their removal hence as soon as possible, as they remain here to your order, and are now held by the company, not as common carriers, but as warehousemen at owner's sole risk, and subject to the ordinary wharfage and demurrage charges." The goods remained at the station for a period of two years and were then sold by the company. An action was brought by the plaintiff to recover damages for conversion, and he obtained judgment for 70%. Upon an application for a new trial a Divisional Court (Denman and Stephen, JJ.) set aside the judgment in favour of the plaintiff and gave judgment for the railway company, following the unreported case of *Trent Mining Co. v. Midland Ry. Co.*, and holding that it was proved that the defendants had charged their ordinary charges, and that it was not a question whether such charges were always insisted upon, but whether or not they were the ordinary charges. The plaintiff was bound by the terms of the advice note and could not complain that no contract was entered into.

In *Shepherd v. Br. & Ex. Ry. Co.*, L. R. 3 Ex. 189; 37 L. J. Ex. 113, cattle delivered by the plaintiff to the defendants arrived in London at noon on Sunday. As the police regulations prevented the cattle being driven through the streets till midnight, they were placed in pens at the station by the defendants' servants,

assisted by a man who was employed by the plaintiff. After midnight, when the plaintiff's drover went to fetch them away, he found that two were dead; and the defendants' servant would not let him take the rest away unless he signed a receipt for the whole number. Afterwards the plaintiff came himself and took them away; but in the meantime the Monday's market was lost. It was held that the defendants' liability as carriers was over before the damage occurred.

CH. XIII.  
Art. 134

It seems that a warehouseman may be liable as an insurer by the custom of a particular trade. *North Brit. Ins. Co. v. Lon. & Globe Ins. Co.*, 5 Ch. D. 569; 46 L. J. Ch. 537.

Goods entrusted to a railway company having been tendered by them for delivery at the address of the consignees, were refused acceptance, and the company thereupon took them back to their own premises. They then (in accordance with their practice) sent an advice note to the consignees' address by post, stating that the goods remained at the risk of the consignees, and would be delivered to the person producing the note. They subsequently delivered the goods to a person who had formerly been in the service of the consignees, and who, having obtained the advice note fraudulently, produced it at the company's premises. It was held, that upon the goods being returned on the company's hands, their duty as carriers was at an end, and they became involuntary bailees; and that in an action brought against them by the consignors for misdelivery and conversion, it was a question of fact whether they had acted under the circumstances with due and reasonable care and diligence. *Heugh v. L. & N. W. Ry. Co.*, L. R. 5 Ex. 51; 39 L. J. Ex. 48.

A railway company carried coals to the station to which they were addressed, and gave notice to the consignee of their arrival, upon which, according to the usual course of practice between them and the consignee, it lay upon him to send for them and take them away; and he not having done so within a reasonable time, they unloaded the coals and left them on the siding, where they were lost. It was held, in an action against them as common

Ch. XIII. carriers, for non-delivery, that they had performed their contract  
Art. 151. by a constructive delivery. *Bradshaw v. Irish North Western Ry. Co.*, 7 Ir. R. C. L. 252.

In *Chapman v. Great Western Ry. Co.*, 5 Q. B. D. 278; 49 L. J. Q. B. 420, certain goods were consigned by the defendants' railway to W., addressed to the plaintiff, "to be left till called for." On their arrival at W. they were placed in the station warehouse to await their being called for. Two days afterwards, without default on the part of the defendants, the warehouse was burnt down, and the plaintiff's goods were consumed by fire. It was held, that after the interval of time which the plaintiff had suffered to elapse since the arrival of the goods, the liability of the defendants as common carriers in respect of the goods had ceased, and they had become mere warehousemen of them, and consequently the defendants were not liable to an action for the loss of the goods, in the absence of any evidence of negligence on their part.

152. Where goods are sent at collection and delivery rates, and the consignee sends a special order referring to a particular consignment, directing that it shall be delivered at the station instead of at his own house, the railway company are bound to deliver the consignment to the person producing the order. If no order as to delivery is presented to the railway company at all, and in Scotland and Ireland if general instructions as to delivery without reference to any particular goods only have been given them, the railway company are entitled to deliver themselves, and are released from all obligation, both to consignor and consignee, by tendering delivery at the address named on the consignment. *Menzies v. Caledonian Ry. Co.*, 5 Ry. & Ca. Ca. 306; *John Wallis*

*d Sons v. G. N. Ry. Co. of Ireland*, 12 Ry. & Ca. CA. 38.  
Art. 188.

In England a railway company are, on the contrary, bound to follow such general instructions, and have no right against the will of the consignees to insist upon carting goods to their destination either by themselves or by any other person employed by them, even where no extra charge is made for that purpose. *Parkinson v. G. W. Ry. Co.*, L. R. 6 C. P. 554.

Where a consignor gives special instructions as to delivery, the same should be followed in preference to a previous general direction given by the consignee.

But special instructions as to delivery given by the consignee, if owner of the goods, over-ride special instructions given by the consignor. See *John Wallis d Sons v. G. N. Ry. Co. of Ireland*, 12 Ry. & Ca. Ca. 38.

In *Menzies v. Cal. Ry. Co.*, 5 Ry. & Can. Ca. 306, Sir Frederick Peel said: "I gather from the carriers' cases that were decided under the Railway and Canal Traffic Act, before the administration of that Act was transferred to the Railway Commissioners, that a railway company cannot force a person against his will to employ them to cart by road in addition to the service of conveyance by railway, and that a consignee has the right, if he pleases, to receive his goods at the station and to relieve the carrier from any further duty of carriage in that case. It does not seem to be disputed that if the consignee sends a special order referring to a particular consignment, directing that it should be delivered at the station instead of at his own house, the railway company would in that case be bound to deliver the consignment to the person producing the order. But in this case the order is of a general kind, to deliver all consignments present or to come

CH. XIII.  
ART. 132.

for the person who sends the order. I confess that if the consignee has the right to receive his goods if he pleases at the station instead of at his own address, I do not myself see any distinction in principle between a special order referring to a particular consignment and a general order referring to all kinds of consignments. But as regards the effect that we are to give to a general order we are in this difficulty, that there is a conflict of view between the decisions that were given under the Traffic Act by the Court of Common Pleas in this country and those given by the Court of Session in Scotland. In this country, in the case of *Bazendale v. The Great Western Ry. Co.*, 28 L. J. C. P. 81; 5 C. B. (N. S.) 336, and in the case of *Garton v. The Great Western Ry. Co.*, 28 L. J. C. P. 158; 5 C. B. (N. S.) 669, and more particularly in *Parkinson v. The Great Western Ry. Co.*, L. R. 6 C. P. 544, the Court of Common Pleas held that a railway company were bound by a general order of that kind. On the other hand, in *Wannan v. Scottish Central Ry. Co.*, 2 Sess. Ca. (3rd Ser.) 1373, and again in *Pickford v. The Caledonian Ry. Co.*, 4 Sess. Ca. (3rd Ser.) 755, the Court of Session held that the railway company were not bound by any such general order, and they laid it down, as I understand, as a proposition of law, that although such a general order might be given by a consignee to a railway company, the railway company had the option to take no notice of the order and to deliver the goods according to the address that they had received. That is a proposition of law, and, in a Scotch case, this being a Scotch case, I think we have no choice but to hold that it is a ruling by which we are bound. That being so, we must, I think, treat the Caledonian Railway Company in this case as if no order had been given to them at all."

In a case before the Commissioners sitting in Ireland, it appeared that F. & Co., carriers, delivered to a railway company at their station goods for conveyance addressed to the consignees. With such goods a consignment note was handed to the railway company, containing, in addition to the names and addresses of

the consignees, the words "To the care of F. & Co." The railway company refused to recognise the latter words, and delivered the goods to the consignees by their own agents or other carriers. The Commissioners held, that the words "To the care of F. & Co." imported that the goods on their arrival at the terminal stations were to be given to F. & Co., or their agents, for delivery to the consignees; that as between the railway company and F. & Co. the latter were the consignors, and that the railway company accepted the goods upon the terms stated in the consignment note; and that the railway company were precluded by the consignment note from being at liberty to employ their own or other carriers to deliver the goods from their railway to the consignees, and should have delivered the same to F. & Co., or their agents. *Fishbourne & Co. v. Gt. S. and W. Ry. Co.*, 2 Ry. & Ca. Ca. 224. Ch. XIII.  
Art. 142.

In the later Irish case of *John Wallis & Sons v. G. N. Ry. Co. of Ireland*, 12 Ry. & Ca. Ca. 38, certain traders in Dublin had given general orders to the railway company to deliver all goods and empties arriving for them to the applicants "no matter how consigned or addressed." Gibson, J., and the other Railway Commissioners, declined to follow the rule as to general orders in *Parkinson v. G. W. Ry. Co.*, L. R. 6 C. P. 554, and distinguished that case from the one then before the Court on the grounds that in *Parkinson's Case* the traffic was that of a small local station with practically only two carters, and that the object of the railway company was to benefit themselves to the prejudice of Parkinson, and further that in that case the general orders given did not require consignors' directions to be disregarded. They accordingly held that the railway company were not bound by the general orders.

153. Sect. 49 of the Railways Act, 1921, enacts:—

(1) On and after the appointed day a railway company may collect and deliver by road any merchandise which is to be or has been carried by railway

**CH. XIII.**  
**Art. 188.**

and may make reasonable charges therefor in addition to the charges for carriage by railway, and shall publish in the rate book kept at the station where it undertakes the services of collection and delivery the charges in force for the collection and delivery of merchandise ordinarily collected and delivered.

(2) Any such company may, and upon being required to do so and upon payment of the proper charges shall, at any place where the company holds itself out to collect and deliver merchandise, perform the services of collection and delivery in respect of such merchandise as is for the time being ordinarily collected and delivered by the company at that place:

Provided that the company shall not be required to make delivery to any person who is unwilling to enter into an agreement terminable by him on reasonable notice for the delivery by the company at the charges included in the rate book of the whole of his traffic, or the whole of his perishable traffic, from the station at which those charges apply.

(3) Where any person does not so agree, the company shall not be required to deliver any of his merchandise, but if such person fails to take delivery of any merchandise within a reasonable time, the company may deliver such merchandise and make such reasonable charges therefor as it thinks fit.

(4) Any dispute as to whether or not any charge for the services of collection and delivery is reasonable, or whether the length of notice for the termination of an agreement under this section is reasonable, shall be determined by the Rates Tribunal.

A railway company cannot charge for the collection and delivery of goods, where those services are not required to be

performed by them. *Garton v. G. W. Ry. Co.*, 5 C. B. (N. S.) 669; 38 L. J. C. P. 158; *Garton v. Bristol & Exeter Ry. Co.*, Ch. XIII, Art. 156. 1 B. & S. 112; 30 L. J. Q. B. 273.

A rebate off a "collected and delivered rate," when collection or delivery are not performed, is not necessarily of the same amount as the separate charges made by a railway company for those services. See *Pickfords v. L. & N. W. Ry. Co.*, 13 Ry. & Can. Ca. 31.

**154.** A railway company are entitled at common law to a particular lien on goods carried by them in respect of their charges for such carriage. See *ante*, p. 86.

They are also entitled to a particular lien on goods in respect of their charges for the provision of reasonable facilities for such goods, *e.g.*, they may retain goods deposited in a cloak-room (provided by them as a reasonable facility) in respect of the charges for such deposit. *Singer Manufacturing Co. v. L. & S. W. Ry. Co.*, [1894] 1 Q. B. 833; 63 L. J. Q. B. 411.

They may also obtain by contract the right to exercise a general lien on goods carried by them in respect of all sums owing to them by the owner of such goods. *Ante*, p. 86.

The railway companies in practice took power in their consignment notes to exercise both a particular and general lien over the goods delivered to them, and also the right to sell the goods after a reasonable time had elapsed.

Under the standard conditions of carriage the railway companies are given liens as follows:—

"Merchandise delivered to the company will be received and held by them subject (a) to a lien for moneys due to them for the



**CH. XIII.** carriage of and other proper charges or expenses upon or in connection with such merchandise, and (b) to a general lien for any moneys or charges due to them from the owners of such merchandise for any services rendered or accommodation provided in relation to the carriage or custody of merchandise, and in case any lien is not satisfied within a reasonable time from the date when the company first gave notice of the exercise of their lien to the owners of the merchandise, the merchandise may be sold and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation thereto, and the company shall account to the owners of the merchandise for any surplus." See Appendix, *post*, Company's Risk Conditions (No. 14); Owner's Risk Conditions (No. 13).

A vendor's right of stoppage *in transitu* is subject to the particular lien of a carrier, but takes priority over a general contractual lien unless otherwise specifically provided for by the contract of carriage. *United States Steel Products Co. v. G. W. Ry. Co.*, [1916] 1 A. C. 189; 85 L. J. K. B. 1; *ante*, p. 104.

In *Westfield v. G. W. Ry. Co.*, 52 L. J. Q. B. 276, the plaintiff consigned certain goods for carriage by the defendants to the consignee's address. The consignment note, which was signed by the plaintiff, contained a condition that "all goods delivered to the company will be received and held by them subject to a general lien for money due to them, whether for carriage of such goods or for other charges." The Court held that the lien continued so long as the company held the goods, and was in no way affected by the refusal of the consignee to accept the goods after they had arrived at their destination.

As to the effect of the consignee's bankruptcy upon a general lien constituted by agreement in favour of the railway company, see *Wiltshire Iron Co. v. Gt. Western Ry. Co.*, L. R. 6 Q. B. 101.

**155.** If, on demand, any person fails to pay the toll due in respect of any carriage or goods, it shall be

lawful for the company to detain and sell such carriage, or all or any part of such goods, or if the same shall have been removed from the premises of the company, to detain and sell any other carriage or goods within such premises belonging to the party liable to pay such tolls, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, of the moneys arising by such sale, and such of the carriages or goods as shall remain unsold, to the person entitled thereto; and it shall be lawful for the company to recover any such tolls by action at law. Railways Clauses Act, 1845, s. 97.

CH. XIII.  
ART. 124.

By sect. 3 of the above Act "the word 'toll' shall include any rate or charge or other payment payable under the special Act for any passenger, animal, carriage, goods, merchandise, articles, matters or things conveyed on the railway." "Toll" also will include as from the appointed day any charge fixed by the Rates Tribunal. See Railways Act, 1921, s. 56, and Sixth Schedule.

Notwithstanding the definition in the Clauses Act, 1845, the Court of Exchequer decided in *Wallis v. L. & S. W. Ry. Co.*, L. R. 5 Ex. 62; 39 L. J. Ex. 57, that the above section of the Railways Clauses Act, 1845, did not give a lien for charges due in respect of the carriage of goods, but only for tolls in the narrow sense of the word, i.e., for charges due for the use of the railway by the wagons or carriages of members of the public using the line as a highway for the passage of their vehicles. See also the Scottish case of *Scottish N. E. Ry. Co. v. Anderson*, 1 Sess. Ca. (3rd Series) 1056.

It may, however, be doubted whether these two decisions can now be supported. In the case of *North Central Wagon Co. v. M. S. & L. Ry. Co.*, 35 Ch. D. 191, the Court of Appeal, while

Ch. XIII. not directly deciding the point, considered sect. 97 of the Rail-  
Art. 186. ways Clauses Act, 1845, and used the word "toll" as being applicable to goods carried by the railway company. See, for example, the judgment of Lindley, L. J., at pp. 228—9 of the Report. The same case afterwards came before the House of Lords, 13 App. Cas. 554; 58 L. J. Ch. 219; and it would appear that the opinion of their Lordships was that in the above section the word "toll" included charges for carriage. Thus, Lord Herschell, at p. 563 of the L. R. report, said, in discussing the section in question: "I think the right conferred is to detain that in respect of which the toll is payable, be it carriage" (*i.e.* the wagon containing the goods) "or goods."

In the Scottish case of *Caledonian Ry. Co. v. Guild*, 1 Sess. Ca. (4th Ser.) 198, Lord Shand held that "toll" in the above section was to be taken in its wide sense as including charges for carriage.

A sum claimed for sending back empty wagons is not a toll within the meaning of sect. 97 of the Railways Clauses Act, 1845. *Field v. Newport, &c. Ry. Co.*, 3 H. & N. 409; 27 L. J. Ex. 396.

**156.** Where a railway company (1) let to a trader a space in their station-yard for the purpose of storing goods conveyed there by their railway, and (2) agree to give him credit for the amounts due to them for the carriage of his goods upon condition that they shall have a continuous general lien upon the goods so deposited in their yard with power to seize and sell the same, this agreement does not constitute a licence to take possession of personal chattels or any charge thereon and is not a bill of sale within the Bills of Sale Acts. *G. E. Ry. Co. v. Lord's Trustee*, [1909] A. C. 109; 78 L. J. K. B. 160.

It is a common practice for railway companies to let (generally by way of licence) to coal merchants and others defined portions of their land adjoining their station for storage purposes, upon condition, *inter alia*, that the company shall have a general lien on the goods there deposited for all amounts due to them by the licensee, with liberty to take possession and sell such goods in the event of the non-payment of these amounts. In the above case the land had been let on demise and not by way of licence, but the House of Lords by a majority held that the inference from the facts was that the company should keep a hold over the goods so long as their account remained open and had not unconditionally delivered them to the tenant.

Ch. XXII.  
Art. 189.

In *Spencer v. Midland Ry. Co.*, 11 Times L. R. 408, 542, the Court of Appeal, affirming Lord Russell, C. J., held that a licence to use ground for storage purposes, coupled with liberty to the railway company to take and sell the goods so stored, was not a bill of sale.

## PART III.

## RAILWAY RATES AND CHARGES.



## CHAPTER XIV.

## THE RAILWAY RATES TRIBUNAL.

Ch. XIV.  
Art. 157.

**157.** The Railways Act, 1921 (*a*), has established a new machinery for the regulation of railway rates and charges.

It has created a new Court called the Railway Rates Tribunal, the chief functions of which are:—

- (a) To settle the terms and conditions of railway carriage, including those for damageable goods. Sects. 42—45 of the Act. See *ante*, Chapter XI.
- (b) To classify merchandise. Sect. 29 of the Act. See *post*, p. 210.
- (c) To fix and revise from time to time—
  - (i) Standard rates for the conveyance of merchandise.
  - (ii) The amounts of terminal charges.
  - (iii) The fares for the conveyance of passengers and their luggage. Sect. 30 and sect. 59 of the Act.

(a) In this chapter The Railways Act, 1921, is referred to as “The Act.”

- (d) To fix the standard revenue for each of the four group companies. Sect. 58 of the Act. CH. XIV.  
Art. 187.
- (e) To settle collection and delivery charges in case of dispute. Sect. 49 of the Act.
- (f) To settle the charges for various miscellaneous services. Sect. 55 and Fifth Schedule of the Act.
- (g) To fix through rates and fares. Sect. 47 of the Act.
- (h) To settle fares for passengers on railway-owned ships. Sect. 53 of the Act.
- (i) To deal with questions as to retention of existing exceptional rates (sect. 36) and the granting of new exceptional rates. Sect. 37 of the Act.
- (j) To determine questions as to whether goods are dangerous. Sect. 50 (3).
- (k) To deal with complaints by persons interested in shipping or canals as to unfair competitive railway rates. Sect. 39.
- (l) To deal with questions as to the discontinuance or alteration of exchange facilities between the four group companies. Sect. 75 (2).

Sect. 27 of the Act enacts that "any existing functions of or powers exercisable by the Railway and Canal Commission shall, in so far as they are exercisable by the rates tribunal by virtue of this Act, cease as from the appointed day hereinafter mentioned to be functions of or powers exercisable by that Commission."

As to the appointed day, see *post*, pp. 221—2.

As to the jurisdiction of the Railway Commissioners, see *post*, p. 314.

**CH. XIV.** Where an issue has been directly raised before and decided by  
**Art. 187.** the Railway Commissioners, it is not open to the same parties to litigate the same issue afresh before the Rates Tribunal. But where a complaint of undue preference by a trader has been dismissed by the Railway Commissioners on the ground that the alleged inequality cannot be removed without unduly reducing the rate charged to the applicant, it is still open to him to apply to the Rates Tribunal generally for a reduction of the rate complained of, and the Tribunal may then adjudicate upon the question as to whether the rate is in all the circumstances a proper rate to be charged. See *The Port of Manchester Warehouses, Ltd. v. Cheshire Lines Committee*, 17 Ry. & Can. Ca. at p. 106.

This case came before the Tribunal under sect. 60 of the Railways Act, 1921, which, pending the operation of the new rates on the appointed day, stabilises existing rates, subject to a trader's right to apply to the Rates Tribunal for a reduction of any particular rate.

**158.** In addition to the jurisdiction described in the last preceding Article, sect. 28 of the Railways Act, 1921, gives the following further powers to the Rates Tribunal:—

Sect. 28.—(1) The Rates Tribunal shall, in addition to any other powers conferred upon them under this Part of this Act, have power to determine any questions that may be brought before them in regard to the following matters:—

(a) The alteration of the classification of merchandise, or the alteration of the classification of any article, or the classification of any article not at the time classified, or any question as to the class in which any article is classified;

Sect. 29 of the Railways Act, 1921, provided that the classification of merchandise should in the first instance be determined by

the Rates Advisory Committee appointed under sect. 21 of the Ministry of Transport Act, 1919. CH. XIV.  
Art. 186.

This Committee, which after the passing of the Act of 1921 may be regarded as practically the same body as the Rates Tribunal, completed the new classification in 1923, and the rates based upon it are to come into force on the appointed (but at present unfixed) day under sect. 31 of the Act.

The new classification, which is contained in a volume of considerable bulk, is too lengthy to set out in detail in this book. Copies may be obtained at H.M. Stationery Office at the price of 35s. Shortly, it is divided into five sections, namely:—

#### I. Classification of goods by merchandise train.

##### (a) General.

This is divided into twenty-one classes, and will take the place of the eight classes of the Rates and Charges Orders, 1891—2.

Coal, coke, and patent fuel are not included in the classification, and are to be dealt with by a special scale of charges to be determined by the Rates Tribunal.

##### (b) Timber.

##### (c) Returned empties.

##### (d) Rolling stock.

##### (e) Dangerous goods.

#### II. Classification of live stock by merchandise train.

#### III. Classification of perishable merchandise by passenger train or other similar service.

#### IV. Classification of merchandise (other than perishable merchandise contained in sect. (iii)) and live stock by passenger train or other similar service.

#### V. Classification of goods by merchandise train and by passenger train or other similar service for the purpose of insurance under the Carriers Act, 1830, as amended by subsequent Acts.



Ch. XIV.  
Art. 188.

(b) The variation or cancellation of through rates;

As to through rates, see *post*, p. 347.

(c) The institution of new, and the continuance, modification, or cancellation of existing group rates;

Sect. 29 of the Railway and Canal Traffic Act, 1888, authorises railway companies to group together for charging purposes any number of places in the same district, provided that the rates charged and the grouped places do not create an undue preference. It also empowers railway companies in doubtful cases to apply to the Railway Commissioners to determine whether any group rate does or does not create an undue preference.

It would appear that the approval of a group rate by the Rates Tribunal under the above sub-section will render an application to the Commissioners unnecessary in the future, as the Tribunal will presumably take all the circumstances into consideration before sanctioning any such rate. See *post*, Chapter XXIII., where sect. 29 of the Traffic Act, 1888, and the relevant cases are dealt with.

(d) The variation of any toll payable by a trader;

By sect. 3 of the Railways Clauses Act, 1845, as amended by sect. 56 and the Sixth Schedule of the Railways Act, 1921, "the word 'toll' shall include any rate or charge or other payment payable under the special Act or fixed by the Rates Tribunal under the provisions of the Railways Act, 1921." See *ante*, p. 205.

Notwithstanding the above definition, the word "toll" in the above sub-section is presumably used in its narrow sense, namely, a payment for the use of a railway by vehicles belonging to members of the public. When the first Railway Acts were passed it was supposed that the companies would be, like the Turnpike Trusts, merely owners of the road, which would be open to all persons with their engines and carriages. See judgment of

Wills, J., in *Hall v. L. B. & S. C. Ry. Co.*, 15 Q. B. D. 505; 5 Ry. & Can. Ca. 28, where the development of railway working is described. These Acts therefore contained powers to charge tolls for the use of the railway in the above sense.

Ch. XIV.  
Art. 100.

It was, however, speedily found that the indiscriminate use of a railway by vehicles owned and worked by the public was impossible, and therefore while the right in theory remains the practice is dead, and the subject is of little more than academic interest.

In *Powell Duffryn Co. v. Taff Vale Ry. Co.*, 9 Ch. App. 331; 43 L. J. Ch. 575, the railway company having refused to allow the plaintiffs to run engines and carriages over part of their line, the Court of Appeal refused to give relief, inasmuch as the plaintiffs could not run over the railway unless the points and signals were worked by the railway company, and the Court would not order the performance of a continuous act such as working signals. The Court pointed out, however, that the plaintiffs failed not on the merits of their case, but because of the difficulty in finding a remedy.

In *Spillers and Bakers, Ltd. v. G. W. Ry. Co.*, 14 Ry. & Can. Ca. 52, the full Court of Appeal, affirming the Railway Commissioners, said that the toll sections of the Railways Clauses Act, 1845, were unworkable.

Section 34 of the Railways Act, 1921 (see *post*, p. 233), repeals as from the appointed day all statutory provisions with respect to charges for "the carriage of merchandise." The toll sections of the early railway special Acts do not relate to "carriage," but rather to the passage of other people's vehicles, and therefore do not appear to be repealed by the above section. On the other hand, the (Fourth Schedule to the above Act (Part VIII.), see *post*, p. 222, requires that the schedule of charges submitted by the railway companies to the Rates Tribunal shall contain "the charges in respect of any toll payable by a trader." The Tribunal therefore in this way are given a control over tolls. The schedules

Ch. XIV  
Art. 158. deposited by the four group companies in fact merely propose that the company may charge under Part VIII. such reasonable sum as the company may think fit in each case. These deposited schedules further add that "for the purpose of this schedule a toll means the charge for the use of the railway company's line for traffic hauled by a private owner's engine, and contained either in a private owner's or company's wagon."

In *Watkinson v. Wrexham, &c. Ry. Co.*, 3 Ry. & Can. Ca. 5, it was held that what determines whether a charge is a rate or a toll is not who provides the engine or carriage, but who are the carriers.

- (e) The amount to be allowed for any terminal services not performed at a station or for accommodation and services in connection with a private siding not provided or performed at that siding;

"Terminal services" mean loading and unloading, covering and uncovering. See Fourth Schedule (Part I.) of the Railways Act, 1921, and clause 14 of the Fifth Schedule of the Act.

As to private siding services, see *post*, p. 285.

"Services in connection with a private siding not provided at that siding" presumably refer to necessary services, such as storage of wagons and shunting services, which may take place a long way from the actual siding. See, for example, *Corporation of Birmingham v. Mid. Ry. Co.*, 14 Ry. & Can. Ca. 24; *Littleton Collieries, Ltd. v. L. & N. W. Ry. Co.*, 16 Ry. & Can. Ca. 169.

It is not clear why this class of private siding services are specifically referred to in the above sub-section, as clause 11 (1) (i) of the Fifth Schedule of the Railways Act, 1921, appears to cover every kind of such service, and clause 11 (2) of that schedule enables the Rates Tribunal to decide what is a reasonable charge for these services. See *post*, p. 285.

- (f) The reasonableness or otherwise of any charge made by a railway company for any services or accommodation for which no authorised charge is applicable; Ch. XIV.  
Art. 159.

Clauses 11 (1) (viii) and 11 (2) of the Fifth Schedule of the Railways Act, 1921, authorise a railway company to charge for any accommodation or services provided or rendered by the company within the scope of its undertaking, and in respect of which no provisions are made by the schedule. See *post*, p. 298.

- (g) The reasonableness or otherwise of any conditions as to packing of articles specially liable to damage in transit or liable to cause damage to other merchandise;

As to the conditions for the carriage of damageable goods not properly packed, see Appendix, Form E, *post*.

- (h) The articles and things that may be conveyed as passengers' luggage;

As to passengers' luggage, see *post*, Chapter XXV.

- (i) The constitution of local joint committees and their functions and the centres at which they are to be established.

Sect. 28.—(2) The powers of the Rates Tribunal under paragraphs (b) to (f) of this section shall not be exercisable until the appointed day.

As to appointed day, see sect. 31 of the Act, *post*, pp. 221—2.

**159.** The following sections of the Railways Act,

CH. XIV.  
Art. 136.

1921, deal with the constitution and procedure of the Railway Rates Tribunal:—

Sect. 20.—(1) There shall be established a court styled the Railway Rates Tribunal (in this Act referred to as the "rates tribunal"), consisting of three permanent members, with power to add to their number as hereinafter provided, and the rates tribunal shall be a court of record and have an official seal which shall be judicially noticed, and the rates tribunal may act notwithstanding any vacancy in their number.

(2) The permanent members of the rates tribunal shall be whole-time officers and shall hold office for such term not exceeding seven years from the date of their appointment as may be determined at the time of appointment and then retire, but a retiring member shall be eligible for reappointment.

(3) The permanent members of the rates tribunal may be appointed by His Majesty at any time after the passing of this Act, and from time to time as vacancies occur, and shall be so appointed on the joint recommendation of the Lord Chancellor, the President of the Board of Trade, and the Minister (*i.e.*, of Transport).

(4) Of the permanent members of the rates tribunal one shall be a person of experience in commercial affairs, one a person of experience in railway business, and one, who shall be the president, shall be an experienced lawyer.

Sect. 21 provides for the appointment of the officers of the tribunal.

Sect. 22.—(1) The rates tribunal may, from time to time, with the approval of the Lord Chancellor, the Lord President of the Court of Session, and the Minister, make general rules governing their procedure and practice and generally for carrying into effect their duties and powers under this Part of this Act, and such rules may, amongst other things, provide for—

(a) the awarding of costs by the tribunal, but so that in proceedings before the rates tribunal at the instance of any

company or person, other than disputes between two or more railway companies, the tribunal shall not have power to award costs unless they are of opinion that either the application or claim or complaint or defence or objection, as the case may be, is frivolous and vexatious;

Ch. XIV.  
Art. 160.

- (b) the reference of any question to a member or officer of the tribunal, or any other person appointed by them, for report after holding a local inquiry;
- (c) the number of members of the tribunal to constitute a quorum;
- (d) enabling the tribunal to dispose of any proceedings before them, notwithstanding that in the course of the proceedings there has been a change in the persons sitting as members of the tribunal;
- (e) the right of audience before the tribunal, provided that any party shall be entitled to be heard in person, or by a representative in the employment of the party duly authorised in writing, or by counsel or solicitor;

and may, subject to the consent of the Treasury, prescribe a scale of fees for and in connection with the proceedings before the tribunal.

(2) The Minister shall give to the rates tribunal such assistance as the tribunal may require, and shall place at the disposal of the tribunal any information in his possession which he may think relevant to the matter before the tribunal, and the Minister shall be entitled to appear and be heard in any proceedings before the tribunal.

(3) The rates tribunal shall annually make a report to the Minister of their proceedings under this Act, which report shall be laid before Parliament.

Sect. 23. Subject to the provisions of this Part of this Act and to the rules made thereunder, the rates tribunal may hold sittings in any part of Great Britain in such place or places as

**Ch. XIV.** may be convenient for the determination of the proceedings before  
**Art. 189.** them. The central office of the tribunal shall be in London.

**Sect. 24.**—(1) There shall be constituted two panels, the one (hereinafter referred to as the general panel) consisting of thirty-six persons, twenty-two being nominated by the President of the Board of Trade after consultation with such bodies as he may consider to be most representative of trading interests, twelve being nominated by the Minister of Labour after consultation with such bodies as he may consider most representative of the interests of labour and of passengers upon the railways, and two being nominated by the Minister of Agriculture and Fisheries after consultation with such bodies as he may consider most representative of agricultural and horticultural interests, and the other (hereinafter referred to as the railway panel) consisting of eleven persons nominated by the Minister after consultation with the Railway Companies' Association, and one person nominated by the Minister to represent railways and light railway companies not parties to the Railway Companies' Association.

(2) A member of a panel shall hold office for such term, not exceeding three years from the date of his appointment, as may be determined at the time of appointment, and then retire, but shall be eligible for reappointment.

(3) If a vacancy occurs amongst the permanent members of the rates tribunal, or if any permanent member of the rates tribunal is incapacitated by prolonged illness or other unavoidable cause from attending meetings of the tribunal, then pending the filling up of such vacancy or during such absence,

(a) in the case of the president, the Lord Chancellor may appoint a person to act in his place;

(b) in the case of either of the other permanent members, the Minister may appoint a member of a panel to act in his place, the person so appointed being selected from the general panel or the railway panel according to the qualification of the permanent member in question.

(4) Whenever for the purposes of any particular case or proceeding the rates tribunal either upon application by any of the parties or otherwise so request, or the Minister thinks it expedient, there shall be added to the rates tribunal two additional members nominated by the Minister from the panels, one selected from the general panel and one from the railway panel.

Ch. XIV.  
Art. 139.

In selecting a member from the general panel, regard shall be had to the particular class of case or proceeding to be heard, so that, as nearly as may be, the person so selected shall be conversant with and have knowledge of the technicalities that may arise in such particular case or proceeding.

(5) Any person appointed under the provisions of this section shall, for the purposes of any proceedings in respect of which he may be so appointed, be a member of the rates tribunal and shall, subject to the provisions of this Part of this Act and to the general rules made thereunder, exercise all the powers and functions of a permanent member of the rates tribunal.

Sect. 25. The decisions of the rates tribunal shall be by a majority of the members including the additional members, and shall not be subject to review otherwise than under the provisions of this Part of this Act relative to appeals from the rates tribunal.

#### APPEAL FROM RATES TRIBUNAL.

160. Sect. 26 of the Act enacts:—

Section seventeen of the Railway and Canal Traffic Act, 1888, shall apply in respect of appeals from the Rates Tribunal in like manner as it applies to appeals from the Railway and Canal Commission.

Provided that, in cases where an appeal lies, the question whether the appeal is to be to the Court of Appeal or to the Court of Session shall be determined in accordance with general rules made under this Part of this Act.



Ch. XIV.  
Art. 100.

Sect. 17 of the above Traffic Act, 1888, is as follows:—

(1) No appeal shall lie from the Commissioners upon a question of fact, or upon any question regarding the *locus standi* of a complaint.

(2) Save as otherwise provided by this Act, an appeal shall lie from the Commissioners to a superior Court of Appeal.

(3) An appeal shall not be brought except in conformity with such rules of Court as may from time to time be made in relation to such appeals by the authority having power to make rules of Court for the superior Court of Appeal.

(4) On the hearing of an appeal the Court of Appeal may draw all such inferences as are not inconsistent with the facts expressly found and are necessary for determining the question of law, and shall have all such powers for that purpose as if the appeal were an appeal from a judgment of a superior Court, and may make any order which the Commissioners could have made, and also any such further or other order as may be just, and the costs of and incidental to an appeal shall be in the discretion of the Court of Appeal, but no Commissioner shall be liable to any costs by reason or in respect of any appeal.

(5) The decision of the superior Court of Appeal shall be final: Provided that where there has been a difference of opinion between any two of such superior Courts of Appeal, any superior Court of Appeal in which a matter affected by such difference of opinion is pending may give leave to appeal to the House of Lords, on such terms as to costs as such Court shall determine.

(6) Save as provided by this Act, an order or proceeding of the Commissioners shall not be questioned or reviewed, and shall not be restrained or removed by prohibition, injunction, *certiorari*, or otherwise, either at the instance of the Crown or otherwise.

## CHAPTER XV.

### STANDARD CHARGES.

**161.** Standard charges for all classes of railway traffic (including passengers and their luggage) are to be settled by the Rates Tribunal in accordance with the following sections of the Railways Act, 1921: —

Chap. XV.  
Art. 161.

Sect. 30.—(1) The constituent companies in each group shall jointly, or with the consent of the rates tribunal any one or more of such companies may, submit to the rates tribunal not later than the thirty-first day of December, nineteen hundred and twenty-two, or such later date as the Minister may allow, a schedule of the standard charges proposed to be made by the amalgamated company into which they are to be formed, according to the classification fixed as aforesaid, and shall (except as hereinafter provided) show in that schedule the rates for the conveyance of merchandise, the amounts of terminal charges, and the fares for the conveyance of passengers and their luggage, and every such schedule shall be published in such manner as the rates tribunal may direct.

(2) The schedules so submitted shall be divided into the parts and be in the form mentioned in the Fourth Schedule to this Act, or into such other parts or in such other similar form as the rates tribunal may prescribe.

Sect. 31. The rates tribunal shall consider the schedules of charges so submitted to them and any objections thereto which may be lodged within the prescribed time and in the prescribed manner, and, after hearing all parties interested and who are desirous of being heard, shall, in accordance with the provisions

Chap. XV. hereinafter contained, settle the schedules of charges and appoint  
Art. 161. a day (hereinafter called "the appointed day") when the same shall come into operation.

The Fourth Schedule to the Act directs that the parts into which every schedule of charges submitted by a company to the rates tribunal is to be divided shall be as follows:—

Part I. containing the charges in respect of the goods and minerals comprised in the several classes of merchandise (including dangerous goods and goods specially liable to damage) specified in the classification;

Part II. containing the charges in respect of animals;

Part III. containing the charges in respect of carriages;

Part IV. containing the charges in respect of perishable merchandise by passenger train or other similar service;

Part V. containing the charges in respect of small parcels;

Part VI. containing the charges in respect of merchandise of an exceptional character;

Part VII. containing the fares and charges to be taken for the conveyance of passengers and their luggage, and for live stock, carriages, parcels and articles of merchandise (other than those included in Part IV.) by passenger train or other similar service;

Part VIII. containing the charges in respect of any toll payable by a trader.

Parts I. to IV. inclusive are to be in the forms set out in the Fourth Schedule to the Act. Parts V. to VIII. are to be in the forms directed by the Tribunal. See the above Fourth Schedule.

The schedules of standard charges submitted to the Tribunal must include the proposed standard charges for every class of traffic, including season tickets and workmen's fares. The expression "standard" is complementary to "exceptional," and every chargeable rate, fare, or charge is included in one or other of these two categories. See *Decision of the Rates Tribunal as to Form of Schedules of Standard Charges*, 17 Ry. & Can. Ca. 147.

It was not possible for the companies to deposit the schedules of standard charges by the 31st December, 1922. Chap. XX.  
Art. 101.

Each of the four group companies has since submitted, in accordance with sect. 30 and the Fourth Schedule to the Act, elaborate schedules of their proposed standard charges to the Tribunal, who are now inquiring into the same. Consequently "the appointed day" has not yet been fixed. Copies of these deposited schedules can be purchased from the respective companies.

**162.** Pending the settlement of the standard charges and the fixing of "the appointed day," the charging powers of the companies are regulated by sects. 60 and 61 of the Act as follows: -

Sect. 60. A constituent, subsidiary, or amalgamated company, or any railway company which is liable to have applied to it a schedule of standard charges shall, notwithstanding anything contained in any special or general Act or in any agreement, be entitled till the appointed day to make such charges in connexion with the carriage of merchandise and passengers or otherwise as were in force as respects the railway on the fifteenth day of August, nineteen hundred and twenty-one; or, where no such charges were in force on that date, then such reasonable charges as shall, in case of difference, be determined by the rates tribunal:

Provided that at any time after the said fifteenth day of August, and before the appointed day,

- (i) any representative body of traders may apply to the rates tribunal to reduce the aforesaid charges or any of them;
- (ii) any trader interested in any particular charge may apply to the rates tribunal to reduce that charge;
- (iii) any such company may apply to the rates tribunal to increase the aforesaid charges or any of them;

any such application shall be published in such manner as the rates tribunal prescribe and the tribunal after hearing all parties

**Chap. XV.** whom they consider entitled to be heard may make such modifications in the said charges or any of them as to the tribunal may seem just, and shall fix a day upon which the modifications are to come into force.  
**Art. 168.**

Sect. 61.—(1) Until an agreement has been made, or the rates tribunal have determined any differences that may arise, between the railway company concerned and the owner of or any person using a private siding (in this section called the "siding owner") as to the sum payable (if any) for accommodation and services provided in connexion with the siding, the following provisions shall apply:—

- (1) Where at the passing of this Act an agreement exists between a railway company (being a constituent or subsidiary company or a company which is liable to have applied to it a schedule of standard charges) and a siding owner, under which the siding owner pays either the whole of the station and service terminals or pays such terminals and is allowed a rebate upon a percentage basis, the agreement shall continue to operate for the period fixed by the agreement, and after the expiration of the agreement, or, if the agreement is terminable on notice, then from the expiration of any notice given thereunder, the provisions of the agreement shall be deemed to remain in force notwithstanding any change which may be made in the amount of the terminal charges:
- (2) Where at the passing of this Act an agreement exists between any such railway company and a siding owner whereby the siding owner pays for accommodation and services provided in connexion with the delivery or collection of merchandise at the siding a fixed sum, or pays for such services terminal charges less a rebate of a fixed amount, the agreement shall continue to operate for the period fixed by the agreement, and after the expiration thereof, or, if the agreement is terminable

on notice, then from the expiration of any notice given thereunder, the sum so payable or the rebate so allowed shall be increased in proportion to the amount by which the aggregate of the conveyance rate and station and service terminals may have been increased since the date of the agreement: Chap. XV.  
Art. 120

- (3) Where at the passing of this Act there is no express agreement as to the amount to be paid for such services, but the siding owner in fact pays station terminals and service terminals or any portion thereof or either of them, the siding owner shall hereafter pay for such services as aforesaid the station terminals and service terminals or such portion of the same as he has heretofore paid:
- (4) Where after the passing of this Act a new siding is connected with the railway, or traffic which is not provided for under the foregoing provisions of this section passes to an existing siding, the siding owner shall pay for the aforesaid services the amount of the station and service terminals for the time being in force; provided that the sum thereafter agreed or in default of agreement determined by the rates tribunal to be payable for such services shall be payable from the date of such connection for traffic or of the passing of the traffic as the case may be or for a period of twelve months from the date of application to the tribunal, whichever is shorter:

Provided that nothing contained in this section shall give rise to any presumption as to the value of the aforesaid accommodation and services, and in fixing any sum which the siding owner is to pay the rates tribunal shall have regard only to what sum is reasonable in all the circumstances of the case.

(2) The Railway and Canal Commission shall not, after the passing of this Act, exercise any jurisdiction with respect to the matters to which this section relates.

## ADJUSTMENT OF CHARGES TO REVENUE.

Chap. XV.  
Art. 163.

**163.** In fixing the charges to be made by each of the four group companies the Rates Tribunal is to have regard to a new principle, namely, the production of such an amount as will with other sources of revenue yield with efficient and economical working and management an annual net revenue to be called "the standard revenue" in accordance with sects. 58 and 59 of the Railways Act, 1921.

These sections are as follows:—

Sect. 58.—(1) The charges to be fixed in the first instance for each amalgamated company shall be such as will, together with the other sources of revenue, in the opinion of the rates tribunal, so far as practicable yield, with efficient and economical working and management, an annual net revenue (hereinafter referred to as the standard revenue) equivalent to the aggregate net revenues in the year nineteen hundred and thirteen of the constituent companies and the subsidiary companies absorbed by the amalgamated company, together with—

- (a) a sum equal to five per cent. on capital expenditure forming the basis on which interest was allowed at the end of the period during which the constituent companies and subsidiary companies were in the possession of the Government; and
- (b) such allowance as may be necessary to remunerate adequately any additional capital which may have been raised or provided in respect of expenditure on capital account incurred since the first day of January, nineteen hundred and thirteen, and not included in the expenditure referred to in the last preceding paragraph, unless it can be shown that such expenditure has not enhanced the value of the undertaking; and

- (c) such allowance as appears to the rates tribunal to be reasonable in respect of capital expenditure (not being less than twenty-five thousand pounds in the case of any work, and not being capital expenditure included in paragraph (a)), on works which enhance the value of the undertaking, but which had not at the beginning of the year nineteen hundred and thirteen become fully remunerative: Chap. XV.  
Art. 128.

Provided that, in determining the sum which charges will, with efficient and economic working and management, yield, the tribunal shall, with a view to encouraging the taking of early steps for effecting economies in working and management expenses rendered possible by or in anticipation of amalgamation, take into consideration the economies effected by such steps already taken, and shall make such allowance in respect thereof as the tribunal may consider fair and equitable to an amount not exceeding thirty-three and one-third per cent. of such economies.

(2) The tribunal when fixing charges in pursuance of the provisions of this section shall have regard to the means which in their opinion are best calculated to ensure the maximum development and extension in the public interest of the carriage by railway of merchandise and of passengers and their luggage, and shall accordingly ascertain as far as may be practicable the effect which the existing charges, or any of them, have had upon the merchandise or passenger traffic to which they are applicable, and in particular whether the application of such charges has tended or, if continued, would be likely to tend towards causing the increase or diminution of the said traffic.

(3) If on any such review as is mentioned in the next following section it appears to the rates tribunal that the allowance made under paragraph (c) of sub-section (1) of this section was too high or too low, the tribunal may revise the allowance and make such adjustment in the amount of the standard revenue as may be necessary.

(4) When fixing the charges necessary to produce the standard



Chap. XV. revenue, the tribunal shall take into consideration the charges in  
Art. 183. respect of any business carried on by the company ancillary or subsidiary to its railways, the charges for which are not subject to the jurisdiction of the tribunal, and if in the opinion of the tribunal the company is not making, or has not taken reasonable steps to enable it to make, adequate charges in respect of any such business, the tribunal shall, in fixing the charges under this Part of this Act, take into account the revenue which would be produced by any such business if adequate charges were in operation.

Sect. 59.—(1) The rates tribunal shall review the standard charges and exceptional charges of each amalgamated company at the end of the first complete financial year after the appointed day, or, if the appointed day is the first day of January in any year, at the end of that year, and, unless directions are given by the Minister to the contrary in manner hereinafter appearing, at the end of each succeeding year, and the review shall be made on the experience of the operation of those charges for the period during which the standard charges have been in operation, or, if that period is more than three years, then on the experience of the operation of those charges during the preceding three years.

(2) The Minister may direct as respects any year after the second annual review that a review shall not be held, and the directions may extend either to all the amalgamated companies or to any one or more of those companies:

Provided that no such direction shall extend to any company which has applied to the Minister for a review, or in respect of which the Board of Trade on the application of any representative body of traders have requested that a review shall be held.

(3) If on any such review the rates tribunal find that the net revenue or the average annual net revenue obtained, or which could, with efficient and economic management, have been obtained, by the company during the period on the experience of which the review is based is substantially in excess of the standard revenue of the company, with such allowance (if any)

## **RAILWAY RATES AND CHARGES.**

as appears to the tribunal necessary to remunerate adequately any additional capital which may have been raised or provided in respect of expenditure on capital account incurred since the date upon which the standard charges were fixed in the first instance, the tribunal shall, unless they are of opinion that owing to change in circumstances the excess is not likely to continue, modify all or any of the standard charges and make a corresponding general modification of the exceptional charges of the company so as to effect a reduction of the net revenue of the company in subsequent years to an extent equivalent to eighty per cent. of such excess: (Chap. XV.  
Art. 100.)

Provided that the tribunal in making such modifications as aforesaid as respects one amalgamated company shall, so far as practicable, avoid making such modifications as would be likely to affect prejudicially the financial position of any other railway company.

(4) If on any such review the rates tribunal find that the net revenue or the average annual net revenue obtained by the company during the period on the experience of which the review is based is less than the standard revenue of the company, with such allowance (if any) as appears to the tribunal necessary to remunerate adequately any additional capital which may have been raised or provided in respect of expenditure on capital account incurred since the date upon which the standard charges were fixed in the first instance, and that the deficiency is not due to lack of efficiency or economy in the management, the tribunal shall, unless in their opinion owing to change of circumstances the deficiency is not likely to continue, make such modifications in all or any of the standard charges and such a corresponding general modification of the exceptional charges of the company as they may think necessary to enable the company to earn the standard revenue with such allowance (if any) as aforesaid.

(5) Whenever on any such review such an excess as aforesaid is found, then, for the purposes of subsequent reviews, subsection (3) of this section shall have effect as if for the standard

**Chap. XV.** revenue there were substituted a sum (hereinafter referred to as  
**Art. 163.** the "increased standard") equal to the standard revenue with the addition of twenty per cent. of such excess, and whenever on any such subsequent review an excess is found above the increased standard together with the allowance (if any) for additional capital, then, for the purpose of subsequent reviews, the increased standard shall be increased by a sum equal to twenty per cent. of such excess, and so on:

Provided that, if at any time after such an excess has been found, the standard charges and exceptional charges are modified in pursuance of sub-section (4) of this section on account of a deficiency, no such substitution shall be made until an excess above the standard revenue together with the allowance (if any, for additional capital is again found.

(6) The rates tribunal, when modifying charges on any such review, shall have regard to the like considerations as when fixing charges in the first instance:

Provided that the tribunal shall have regard to the financial results obtained from the operation of any ancillary or subsidiary business carried on by the company, and if satisfied that the net revenue resulting therefrom is, having regard to all the circumstances, unduly low, may, for the purpose of such review, make such deductions from the charges which would otherwise have been fixed as they think proper.

(7) The modifications of standard charges and exceptional charges made in pursuance of this section shall take effect as from the 1st day of July in the year following the last year under review or such other date as the rates tribunal may fix.

#### OBLIGATION TO CHARGE STANDARD CHARGES.

164. Sect. 32 of the Railways Act, 1921, enacts:

On and from the appointed day the charges appearing in the schedule of charges as fixed by the

Rates Tribunal for each amalgamated company (in this Part of this Act referred to as "the standard charges") shall be the charges which that company shall be entitled to make for all services rendered in respect of which charges are fixed, and no variation either upwards or downwards shall be made from such authorised charges unless by way of an exceptional rate or an exceptional fare continued, granted, or fixed under the provisions of this Part of this Act, or in respect of competitive traffic in accordance therewith.

Chap. XV.  
Art. 124.

As to "the appointed day," see *ante*, pp. 221—2. "Charges" includes rates, fares, tolls, dues, and other charges. See sect. 57 of the Act.

As to exceptional rates, see sects. 36—40 of the Act, *post*, p. 238.

While the effect of the above section is to establish a rigid system of standard charges, the railway companies, by agreement with the traders, still have a free hand, within certain limits, to continue existing exceptional rates (see sect. 36 of the Act, *post*, p. 238) and to grant new exceptional rates, subject in the latter case to reporting any new rate to the Minister of Transport and, if he so requires, obtaining the sanction of the Rates Tribunal. See sect. 37 of the Act, *post*, p. 242.

The charges for merchandise authorised by the Act are:—

- (a) The standard charges fixed by the Rates Tribunal under sect. 31 of the Act. *Ante*, p. 221.
- (b) Exceptional charges continued, granted, or fixed, under sects. 36—41 of the Act. *Post*, p. 238.
- (c) The general power to charge under c. 11 (1) (viii) of the Fifth Schedule to the Act (see *post*, p. 298) for any accommodation or services provided within the scope of a railway company's undertaking for which no provision is made, will apply to all services or accommodation

Chap. XV.  
Art. 164.

within the scope of a railway company's undertaking, even though the company are not under an obligation to render or provide any particular service or accommodation. See *Midland Ry. Co. v. Myers, Rose & Co., Ltd.*, [1909] A. C. 13; and judgment of Moulton, L. J., in that case, [1909] 2 K. B. 356; 78 L. J. K. B. 95.

For an example of services outside the scope of a railway company's undertaking, see *Watson, Todd & Co. v. Mid. & L. & N. W. Ry. Co.*, 9 Ry. & Can. Ca. 90. (Providing for conveyance and delivery on another company's railway.)

The Court of Appeal in the above case of *Mid. Ry. Co. v. Myers, Rose & Co., Ltd.*, *supra* (confirmed by the House of Lords), in effect disapproved of the grounds upon which the same Court had decided the earlier case of *Stone v. Mid. Ry. Co.*, [1904] 1 K. B. 669; 73 L. J. K. B. 392, in which it had been held that since the railway company were under no obligation to carry non-perishable goods by passenger train, they could make what terms they liked for such carriage, and, therefore, that a trader was not entitled to a rebate off the collection and delivery rate charged, even though he did not avail himself of those services. In the case of *Myers Rose, supra*, the Court of Appeal did not accept this view, but explained that the decision in *Stone's Case* could be upheld on another ground, namely, that by sect. 27 of the schedule to the Midland Ry. Co.'s Rates and Charges Order, 1891, except as to perishable traffic, "nothing therein contained shall apply to the conveyance of merchandise by passenger train or to the charges which the company may make therefor."

**165.** As regards railway companies other than the four group companies, sect. 33 of the Act provides as follows:—

As respects railway companies, other than amal-

gamated companies and light railway companies and railway companies whose powers of charging have, since the fourteenth day of August, nineteen hundred and nineteen, been increased by special Act either generally or in relation to any particular class of traffic, the Rates Tribunal shall apply to each such company the schedule of charges of such one of the amalgamated companies as, after considering any objections thereto which may be lodged within the prescribed time and in the prescribed manner and after giving the company in question and all other parties whom they consider to be entitled to be heard before them an opportunity of being heard, appears to the tribunal to be most appropriate to the case of that company, and may so apply it either without modification or subject to such modifications as the tribunal may think fit; and, where a schedule has been so applied to any company, the last foregoing section (sect. 32) shall apply to the company as if it were an amalgamated company.

Chap. XV.  
Art. 100.

The above section will apply to the few surviving railway companies not included in the four groups, such as the Metropolitan Ry. Co. and the Cheshire Lines Committee, except in the case of companies such as that of the District Ry. Co., whose charging powers are regulated by special Acts passed since 14th August, 1919.

#### REPEAL OF EXISTING CHARGING POWERS.

**166.** Sect. 34 of the Railways Act, 1921, enacts as follows:—

(1) As from the appointed day all statutory provisions, and the provisions of all agreements with

## *THE LAW OF CARRIERS BY RAILWAY.*

**Chap. XV.  
Art. 100.**

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respect to classification of merchandise and with respect to charges for or in connection with the carriage of merchandise or passengers by any railway which becomes a railway of an amalgamated company, or of a railway company to which a schedule of standard charges is applied, shall to the extent to which those provisions relate to the matters aforesaid be repealed and cease to be operative, except so far as any statutory provision authorises for the purpose of calculation of distance a special mileage to be allotted in respect of any portion of a railway, and except so far as, in the case of any such agreement or in the case of a statutory provision fixing a special charge, it may be continued under the provisions of this Part of this Act or by an order of the Rates Tribunal:

Provided that nothing in this Act shall, except as otherwise expressly provided, affect the provisions of section six of the Cheap Trains Act, 1883 (which relates to the conveyance of His Majesty's forces and matters connected therewith).

(2) In the case of the rates fixed under paragraph (v) of subsection (1) of section six of the Cheap Trains Act, 1883, or in any case where it is proved to the satisfaction of the Rates Tribunal that any charge in operation on the fourth day of August, nineteen hundred and fourteen, and fixed under any subsisting agreement or special statutory provision was originally so fixed for valuable consideration, the Rates Tribunal shall, and in any other case may, by order continue the charge, subject to such adjustment, if any, as to the tribunal may appear fair and equitable, and in making such adjustment, if any, the tribunal shall, as

far as practicable, provide that the relative position between persons entitled to the charge and other persons as existing on the said fourth day of August shall not be prejudiced or improved.

Chap. XV,  
Art. 188.

The effect of the above sub-sect. 1 is to repeal as from the appointed day (see sect. 31 of the Act, *ante*, pp. 221—2), (a) the provisions of the various Railway Rates and Charges Orders Confirmation Acts, 1891—2, as to the charges for the carriage of merchandise; and (b) the provisions of the various special Acts of the former railway companies, many of which date back to the early period of railway legislation, as to passenger fares. A question may arise as to whether sect. 2 of the Cheap Trains Act, 1883—which exempts from duty passenger fares not exceeding 1*d.* per mile—is also repealed, but as this section refers to omission of duty rather than to an actual charge, it would appear to remain in operation.

All agreements with respect to charges are also to be terminated, but sect. 36 (1) of the Act, *post*, p. 238, contains provisions whereby existing exceptional rates are to be continued by agreement.

Sect. 6 (1) (v) of the Cheap Trains Act, 1883, provides that baggage, stores, ammunition, &c. of His Majesty's forces are to be carried at rates not exceeding 2*d.* per ton per mile.

With regard to charges for special services, sect. 11 of the Fifth Schedule to the Act replaces sect. 5 of the Schedule to the former Rates and Charges Order. These charges are to be reasonable, and in case of difference are to be settled by the Rates Tribunal instead of by arbitration, which in practice meant the railway Commissioners under the former system. See *post*, p. 283.

Collection and delivery charges are to be settled by the Rates Tribunal in case of dispute. See sect. 49 (4) and sect. 11 (1) (ii) of the Fifth Schedule of the Act. *Post*, pp. 255 and 291.

Charges in connection with railway-owned docks, piers, &c., are controlled by the several companies' special Acts relating



**Chap. XV.** thereto, and are not affected by the Railways Act, 1921. See  
**Art. 188.** sect. 9 of the Fifth Schedule to the Act. At the same time the Rates Tribunal, when fixing the standard revenue of the companies (see *ante*, p. 228), are required by sect. 58 (4) of the Act to take into consideration the charges in respect of any ancillary business of the companies which are not subject to their jurisdiction.

### SUBSEQUENT MODIFICATIONS OF STANDARD CHARGES.

**167.** The standard charges as originally fixed may be modified under sect. 35 of the Act as follows:—

Sect. 35. Any amalgamated company or any railway company to which a schedule of standard charges has been applied, or any representative body of traders or any person who may obtain a certificate from the Board of Trade that he is, in the opinion of the Board of Trade, a proper person for the purpose, shall be entitled at any time to apply to the rates tribunal to modify the standard charges or any of them, or any conditions relative thereto, and, if any such company or body of traders or person, as the case may be, prove to the satisfaction of the rates tribunal that the standard charges or conditions or any of them ought to be modified, the tribunal shall make such modifications as they think fit, and shall fix the date as from which the modified standard charges or conditions shall be effective:

Provided that sub-sections (3), (4), (5), and (6) of section fifty-nine of this Act shall apply to any application for a general revision or variation of standard charges of an amalgamated company under this section as if such application were a review of standard charges and exceptional charges under that section:

Provided also that, where the schedule of standard charges of any amalgamated company has been applied to any other company, the tribunal may modify the charges or any of them in the schedule as applied to the amalgamated company without modify-

ing them in the schedule as applied to such other company, or modify them in the schedule as applied to such other company without modifying them in the schedule as applied to the amalgamated company.

Chap. XV.  
Art. 147.

Under the system whereby a guaranteed standard revenue is secured to the four group railway companies in accordance with sects. 58 and 59 of the Act (see *ante*, p. 226), the Rates Tribunal are to review the standard and exceptional charges of the companies at the end of each financial year, and to make such upward or downward changes in the above charges as they may think necessary to enable each company to earn their standard revenue. See sect. 59 of the Act. *Ante*, p. 228.

Further, under sect. 37 of the Act (*post*, p. 242), each of the four group companies, and any railway company to which a schedule of standard charges has been applied (see sect. 33 of the Act, *ante*, p. 232), may grant within certain limits new exceptional rates, which are to be reported to the Minister of Transport, and may be referred by him to the Rates Tribunal. In that case it is open to the Tribunal, if, *inter alia*, they think that the standard revenue of the company in question is jeopardised by the manner in which new exceptional rates are being granted, to revise the whole or some of the standard charges of that company.

## CHAPTER XVI.

## EXCEPTIONAL CHARGES.

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## EXISTING RATES.

Ch. XVI.  
Art. 168.

168. Sect. 36 of the Railways Act. 1921, enacts:—

(1) On and from the appointed day all exceptional rates in operation immediately before the appointed day on the railway of any amalgamated company or any company to which a schedule of standard charges has been applied shall cease to operate, with the exception of such exceptional rates as—

(a) are not less than five per cent. below the standard rates which would otherwise on and from the appointed day become chargeable; and

(b) have been continued by agreement in writing between the railway company and the trader concerned or, failing agreement, have been notified in writing to the secretary of the railway company by the trader with a request that they should be referred to the Rates Tribunal for determination by them, in which case the rates shall continue until determined by the Rates Tribunal, and the onus of proving that any such rates should be altered or discontinued shall be upon the railway company;

so nevertheless that no rate which has not been

applied to the charging of merchandise actually forwarded within the two years preceding the first day of January, nineteen hundred and twenty-three, shall be continued unless the trader can prove to the satisfaction of the railway company or, failing agreement with the railway company, to the satisfaction of the Rates Tribunal—

ON. XVI.  
Art. 100.

- (i) that its non-application is solely due to abnormal conditions of trade; or
- (ii) that a rate of equal amount to the same destination remains in operation at other stations or sidings in the same group or area:

Provided that, if the trader and the railway company agree to continue any rate which will be more than forty per cent. below the standard rate chargeable as aforesaid, the rate shall, before the appointed day, be referred to the Rates Tribunal, and, if so referred, shall continue until the tribunal have determined the matter.

(2) Any such agreement or determination may provide for the continuance of any exceptional rate at the same or any higher figure or charge, not being, in the case of an agreement between a railway company and a trader, less than five per cent. nor more than forty per cent. below the standard rate chargeable, and for a specified period of time.

Sect. 57 of the Act defines "exceptional charges" as charges below the standard charges, and the expressions "exceptional rates" and "exceptional fares" shall be construed accordingly.

The effect of the above sect. 36 is that, while standard charges cannot be varied (see sect. 32 of the Act), existing exceptional rates in operation before the appointed day (see *ante*, pp. 221—2)

Sec. XVI. may be continued without the sanction of the Rates Tribunal  
Art. 168. provided—

- (1) They are not less than 5 per cent. nor more than 40 per cent. below the corresponding standard rates which would otherwise be chargeable.
- (2) They have been continued by agreement in writing between the railway company and trader concerned; and
- (3) Traffic had actually passed at the rate in question within the two years preceding 1st January, 1923, save in cases where the rate had not been applied owing to abnormal trade conditions.

In the case of existing exceptional rates which a railway company refuse to continue after the appointed day, or which will be more than 40 per cent. below the corresponding standard, the same are to be referred (in the case of refused rates at the trader's request) to the Rates Tribunal and determined by them.

Hitherto railway rates for merchandise have been known as (a) class and (b) exceptional rates.

Class rates were equal or close to the maxima fixed by the various Companies' Rates and Charges Orders Confirmation Acts, 1891—2, in respect of the eight classes of merchandise specified in those Orders. Class rates generally meant that the traffic on which they were charged was carried at company's risk.

Exceptional rates were reduced, *i.e.* below class rates. Traffic carried at these rates was generally at owner's risk, or subject to some special conditions.

A sub-division of exceptional rates was known as "scale rates." These were fixed reduced rates for certain classes of traffic based on an unpublished table of charges which had originally been adopted by the leading railway companies for settling through rates for interchange traffic, and which was in some cases applied to local traffic, *i.e.* traffic passing over the line of one company only.

Under the above system, which will continue in force until

"the appointed day," some 75 per cent. of the total merchandise traffic of Great Britain (other than coal or coke) was carried at exceptional rates. It has been calculated that the number of these rates amounted to many millions (some putting the figure as high as fifty millions), but of these a considerable proportion were obsolete.

Ch. XVI.  
Art. 198.

The effect of the new and extended classification of merchandise (*ante*, p. 211) will be to transform many exceptional rates into standard rates; but after allowing for this and the cancellation of obsolete rates, as well as the possible abolition of those rates which are not less than 5 nor more than 40 per cent. below the corresponding standard rates, it would seem that there will still remain a great number of existing exceptional rates which may be continued by agreement between the companies and the traders concerned.

A railway company may increase or cancel an exceptional rate which has not been fixed by the Rates Tribunal, subject to the right of any interested trader to appeal (with certain exceptions) to the Tribunal. See sect. 38, sub-sects. 3 and 4 of the Act, *post*, p. 244.

Although the above section (sect. 36) of the Act appears to give (within limits) railway companies and traders a free hand with regard to existing exceptional rates, it is to be observed that in practice the Rates Tribunal will, under sect. 59 of the Act (*ante*, p. 228), have a control over all exceptional charges after the end of the first financial year following the appointed day. That section empowers the Tribunal to make such upward or downward modifications in a railway company's exceptional charges as it may consider necessary in order to enable the company to earn their standard revenue, and it would seem that this includes a power to modify all exceptional rates.

In general, exceptional rates are owner's risk rates. In this connection sect. 46 (3) of the Act (see *post*, p. 250) requires that the difference between "an ordinary rate (which presumably

Ch. XVI. means the standard rate at company's risk) and an owner's risk  
Art. 100. rate shall be such as, in the opinion of the Rates Tribunal, is fairly equivalent to the amount by which the risk of the company . . . . differs under the two sets of conditions."

### NEW EXCEPTIONAL RATES.

169. Sect. 37 of the Railways Act, 1921, enacts:—

(1) On and after the appointed day an amalgamated company or a railway company to which a schedule of standard charges has been applied shall be at liberty to grant new exceptional rates in respect of the carriage of any merchandise, which rates shall within fourteen days, or such longer period as the Minister may allow, be reported to the Minister; so, however, that a new exceptional rate so granted shall not, without the consent of the Rates Tribunal, be less than five per cent. or more than forty per cent. below the standard rate chargeable.

(2) If the Minister is of opinion that any company is granting new exceptional rates in such manner as prejudicially to affect any class of users of the railway not benefited by such rates, or so as to jeopardise the realisation of the standard revenue of such company, he may refer the matter to the Rates Tribunal, who may, after giving all parties interested an opportunity of being heard, take either or both of the following courses:—

(a) revise the standard charges of that company or any of them:

(b) cancel or modify all or any of such exceptional rates.

(3) Any trader may, at any time, apply to the Rates Tribunal to fix a new exceptional rate.

CH. XVI.  
Art. 109.

"The Minister" is the Minister of Transport. See sect. 2 of the Act.

By c. 20 of the Fifth Schedule to the Act, a "trader" includes any person sending or receiving, or desiring to send or receive merchandise by railway.

In *Port of Manchester Warehouses, Ltd. v. Cheshire Lines Committee*, 17 Ry. & Can. Ca. at p. 105, the Rates Tribunal held that something in the nature of a direct interest must be shown to justify an application for a reduction in an existing rate under sect. 60 (ii) of the Act, and that a warehouse company which acted as forwarding agent and quoted a consolidated rate for port and railway services was a "trader" within that section.

In the same case the Rates Tribunal thought that regard should be had to the following considerations in deciding what was a reasonable exceptional rate; namely: (a) That it is not enough for a trader to show that, without a reduction in rate, he cannot carry on a particular branch of his business; (b) that when railway companies declare that in their own interests they cannot grant facilities or reductions in rates, it would not be right to compel them to adopt such a course of business unless the applicants show that the railway companies are mistaken; (c) that it was not intended by the Railways Act, 1921, to establish the principle of equal mileage rates for all places, and therefore that the existence of a low exceptional rate (not being in fact an undue preference), while a fact to be considered, is not alone a sufficient ground for ordering the reduction of a rate for goods in competition with those having the benefit of the low rate.



## VARIATION OF EXCEPTIONAL RATES.

Ch. XVI.  
Art. 170.

170. Sect. 38 of the Railways Act, 1921, enacts:-

(1) An amalgamated company or a railway company to which a schedule of standard charges has been applied shall not be entitled to increase or cancel any exceptional rate which has been fixed by the Rates Tribunal without first obtaining the sanction of that tribunal.

(2) Any such company may, at any time, reduce any exceptional rate, so, however, that the rate shall not, without the consent of the Rates Tribunal, be reduced so as to be more than forty per cent. below the standard rate which would be chargeable, but any such reduction shall be reported to the Minister in like manner as if it were the grant of a new exceptional rate.

(3) Any such company may, at any time, increase (a) any exceptional rate which has not been fixed by the Rates Tribunal on giving thirty days' notice in such manner as the Rates Tribunal may prescribe of the proposed increase, and on the expiration of such notice may, if no objection be raised by any trader interested, forthwith bring the increased rate into force, provided that it is not less than five per cent. below the standard rate chargeable, but, if such an objection be raised or if the rate when increased would be less than five per cent. below the standard rate chargeable, the increase shall not have effect unless and until the Rates Tribunal, after giving the company an opportunity of being heard, so determine:

Provided that no trader shall be entitled to object

(a) See note p. 246.

to an increase of an exceptional rate reduced by a railway company since the appointed day unless the effect of the increase is to make the rate applicable to his traffic higher than the rate applicable thereto immediately before the reduction (b).

CH. XVI.  
ART. 170.

(4) Any such company may, at any time, cancel any exceptional rate which has not been fixed by the Rates Tribunal on giving thirty days' notice in such manner as the Rates Tribunal may prescribe of the proposed cancellation, and on the expiration of such notice may, if no objection be raised by any trader interested, forthwith cancel the rate as proposed, but, if any such objection be raised, the cancellation shall not have effect unless and until the Rates Tribunal, after giving the company an opportunity of being heard, so determine:

Provided that no trader shall be entitled to object to the cancellation of an exceptional rate granted by a railway company since the appointed day unless the effect of the cancellation is to make the rate applicable to his traffic higher than the rate applicable thereto at the date when the exceptional rate was granted.

(5) No such increase or cancellation shall take effect in the case of any exceptional rate referred to the Rates Tribunal under paragraph (b) of subsection (1) of section thirty-six of this Act pending the decision of the tribunal with reference thereto, and any exceptional rate agreed under the said section thirty-six shall not be increased or cancelled for a period of twelve months after the appointed day except as part of a general increase under this Part of this Act or to abate an undue preference.

(b) See note p. 247.

Ch. XVI.  
Art. 170.

(6) Any trader or representative body of traders interested in the rate, or any such company, shall be entitled to apply to the Rates Tribunal at any time to cancel or vary any exceptional rate.

(7) Any such company may cancel any exceptional rate existing after the appointed day which for a period of two years shall not have been applied to the charging of merchandise actually forwarded by railway.

(a) Sect. 1 of the Railway and Canal Traffic Act, 1894, along with the amending Railway and Canal Traffic Act of 1913, have been repealed by sect. 86 and the Ninth Schedule (Part I.) of the Railways Act, 1921. The Rates Tribunal, therefore, in considering objections to increases of exceptional rates will presumably not be bound by decisions given under the above repealed enactments.

It is thought therefore to be unnecessary to discuss at length the subject of increase of rates.

Shortly, the principles followed by the Railway Commissioners when dealing with this class of case were as follows:—

1. Where after all the elements of cost and economy had been considered an increase in expenses under uniform condition was proved without a compensating advantage to the company, an increase of rate by the actual amount of such increase in working expenses was *prima facie* justified. *Smith and Forrest v. L. & N. W. Ry. Co.*, 11 Ry. & Ca. Tra. Ca. 156; *Rickett, Smith & Co. v. Mid. Ry. Co.*; *Mansion House Association v. L. & N. W. Ry. Co.*, [1896] 1 Q. B. 273; 9 Ry. & Can. Ca. 174.

2. An increase of rate was not justified by a temporary increase in the cost of working. *Smith and Forrest v. L. & N. W. Ry. Co. and Others*, 11 Ry. & Ca. Tra. Ca. 156.

3. The increase in rate, if justified, was limited to the actual amount of the increase in the cost of working, and was not based

on an increase in the ratio of cost to receipts. *Black & Sons v. Caledonian Ry. Co. and Others*, 11 Ry. & Can. Ca. 176. Ch. XVI.  
Art. 170.

4. The fact that the increased rate as a whole was reasonable in itself was not enough. It was necessary to justify the amount of the increase. *Mansion House Association v. L. & N. W. Ry. Co.*, [1896] 1 Q. B. 273; 9 Ry. & Can. Ca. 174.

5. It was not sufficient to show that the cost of working the traffic as a whole had increased. It was necessary to show that there had been an increase in the cost of working the particular class of traffic on which the rates had been increased.

This last rule, however, had been modified by the Railway and Canal Traffic Act, 1913, now repealed by sect. 86 and the Ninth Schedule of the Act of 1921. The first Act enabled a railway company to justify an increase of rate by showing that the particular increase complained of was part of a general increase of rates made for the purpose of meeting a rise in the cost of working resulting from improvements made in the conditions of employment of the company's staff. As to the method of proof, see *Associated Portland Cement Co. v. Gt. N. Ry. Co.*, [1916] 2 K. B. 262; 16 Ry. & Can. Ca. 94; *Botterly Co. v. Mid. Ry. Co.*, 16 Ry. & Can. Ca. 295.

(b) The effect of the proviso to sub-sect. 3 of the above sect. 38 is to overrule the decision of the Court of Appeal in *North Staffordshire Colliery Owners' Association v. North Staffordshire Ry. Co.*, [1907] 2 K. B. 191; 13 Ry. & Can. Ca. 78, in which it was held that where the railway company had reduced certain rates and subsequently increased them to the same level at which they originally had stood, they had increased such rates within sect. 1 (now repealed) of the Railway and Canal Traffic Act, 1894, and must justify such increase.

REVIEW OF EXCEPTIONAL RATES AT THE INSTANCE OF  
SHIPPING AND CANAL INTERESTS.CH. XVI.  
Art. 171.

171. Sect. 39 of the Railways Act, 1921, enacts:

If and whenever representations are made to the Minister by any body of persons who, in the opinion of the Board of Trade, are properly representative of the interests of shipping or canals, that exceptional rates are being charged which are competitive with coastwise shipping or canals in such a manner as to be detrimental to the public interest, and which are inadequate having regard to the cost of affording the service or services in respect of which the rates are charged, the Minister shall (if satisfied that a *prima facie* case has been made out) refer the matter to the Rates Tribunal for review, and the Rates Tribunal may, after hearing all parties whose interests are affected, vary or cancel such rates or make such other order as may seem to them expedient.

Before the war shipping charges by coasting vessels were in general less than the corresponding railway class and exceptional rates, with the result that the railway companies charged exceptional reduced rates in cases where they had to meet sea competition. A complaint of undue preference was often successfully resisted on this ground. See *post*, p. 399. During the war the position was reversed, since shipping charges were increased owing to the heavy increase in the cost of working, while no increase was made in railway rates until January, 1920, owing to the companies' net revenue for 1913 having been guaranteed by the Government as from the outbreak of the war in August, 1914. The position is now more normal.

With regard to canals it would appear from the report of and evidence taken by the House of Commons Committee on Trans-

ports, 1918, that out of some 3,639 miles of canals in Great Britain, 1,268 are owned or controlled by railway companies. With one exception (the Shropshire Union Canals leased to the London, Midland and Scottish Ry. Co.) the railway companies are toll-takers only, the carriage of goods being performed by barge-owners or bye-traders, as they are called. These carriers, along with the owners of non-railway controlled canals, will be entitled to apply to the Minister of Transport under the above section.

Ch. XVI.  
Art. 171.

### OWNER'S RISK RATES.

172. Sect. 46 of the Railways Act, 1921, enacts:-

(1) When settling a schedule of charges, or within twelve months or such longer period thereafter as in any case the Minister may allow, the Rates Tribunal shall determine what reductions (*a*) shall be made from the standard charges where damagable merchandise is carried by railway under owner's risk conditions, and such reductions shall be shown or indicated in the schedules in such manner as the tribunal prescribe.

(2) Where an exceptional rate is in operation and the conditions applicable to that rate are the company's risk conditions, or, as the case may be, the owner's risk conditions, and the difference (*b*) in the company's liability under the two sets of conditions in respect of the merchandise in question is not insignificant, the company shall, on request in writing by a trader, quote a corresponding rate under the other conditions, and, if within twenty-eight days from such request the company fails to quote such a rate to the satisfaction of the trader, the trader may apply to the

CH. XVI.  
Art. 173.

Rates Tribunal, and the tribunal shall settle such corresponding rate and determine the date as from which it is to come into operation.

(3) The difference (b) between an ordinary rate and an owner's risk rate shall be such as in the opinion of the Rates Tribunal is fairly equivalent to the amount by which the risk of the company in the case of the merchandise in question differs under the two sets of conditions.

(4) A railway company shall be under no obligation to carry livestock at owner's risk rates in cases in which livestock is not at the date of the passing of this Act carried at reduced rates under owner's risk conditions.

(a) In *Manufacturing Confectioners' Alliance v. Cal. Ry. Co., &c.*, 17 Ry. & Can. Ca. 135, the railway companies carried confectionery not packed in bottles at company's risk, but refused to carry confectionery in bottles except at owner's risk, while charging the same rates in both cases. The companies thereby escaped liability (apart from that arising from the difference in packing) for certain losses in respect of the goods in bottles, while accepting liability for such losses in respect of goods not so packed. The resulting saving to the companies in the case of the goods carried at owner's risk was 4 to 5 per cent., and the Rates Tribunal held that this was not sufficient to justify a reduction in that rate.

(b) In a case where it was shown that the difference in risk was so small as to be negligible, when the goods in question (gramophone discs) were properly packed, the Rates Tribunal decided that there was no ground for directing that there should be two scales of rates with different conditions. *Federation of British Music Industries v. Cal. Ry. Co., &c.*, 17 Ry. & Can. Ca. 121.

## EXCEPTIONAL FARES.

173. Sect. 41 of the Railways Act, 1921, enacts:— Ch. XVI.  
Art. 173.

(1) Any amalgamated company or railway company to which a schedule of standard charges has been applied may charge fares below the standard fares in such circumstances as the company may think fit, but the circumstances in which such exceptional fares, if below ordinary fares, may be charged, and the amount of reduction below the standard fare, shall be reported to the Minister within fourteen days, or such longer period as the Minister may allow, after the decision has been arrived at.

(2) If the Minister is of opinion that any company has granted exceptional fares in such a manner as prejudicially to affect any other class of users of the railway, or so as to jeopardise the realisation of the standard revenue of the company, he may refer the matter to the Rates Tribunal, who may, after giving the parties interested an opportunity of being heard, cancel or modify all or any of the exceptional fares so granted.

By sects. 30—32 of the Act, the four group railway companies are to include in their schedules of standard charges fares for the conveyance of passengers and their luggage which, after being settled by the Rates Tribunal, are to be charged as from the appointed day, without variation, unless by way of an exceptional fare.

"Standard charges" include season tickets and workmen's fares. See decision of Rates Tribunal hereon, 17 Ry. & Can. Ca. 147.



GA. XVI.  
ART. 173.

The former charging powers for passenger traffic were contained in the original special Acts of the various companies. These are now repealed as from the appointed day by sect. 34 of the Act. See *ante*, p. 233. Sect. 6 of the Cheap Trains Act, 1883, which provides for the conveyance of His Majesty's Forces at reduced fares, is not affected. *Ibid.*

As to "standard revenue," see *ante*, p. 226.

## CHAPTER XVII.

### OTHER CHARGES.

#### MINIMUM DISTANCE CHARGES.

174. Sect. 48 of the Railways Act, 1921, enacts:— CH. XVII.  
Art. 174.  
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An amalgamated company or a railway company to which a schedule of standard charges has been applied shall be entitled to charge for the conveyance of merchandise as for a minimum distance of such number of miles as the Rates Tribunal may determine, or such minimum sum as the Rates Tribunal may determine, and the Rates Tribunal may fix greater minimum distances or higher minimum sums where the conveyance is over the railways of two or more such companies, but such minimum distances shall not vary according to whether charges for station terminals are or are not made.

This section will take the place, as from the appointed day (see sect. 34 of the Act), of sect. 11 of the Schedule to the Standard Rates and Charges Orders, 1891—2.

The latter section limited the minimum distance charge to definite distances, namely:—

Three miles where a station terminal was charged at each end.

Four and a half miles where a station terminal was charged at one end.

Six miles where there was no station terminal.

**Ch. XVII.** It also provided that where there was conveyance over the lines  
**Art. 174.** of two companies, the two lines should, for the purpose of reckoning a short distance, be considered as one railway.

In *Lancashire and Cheshire Coal Association v. L. & N. W. and L. & Y. Ry. Co.*, [1907] 2 K. B. 902; 76 L. J. K. B. 1020; 13 Ry. & Can. Ca. 8, the meaning of the last mentioned proviso was considered by the Court of Appeal, which decided that it only applied to cases where one company conveyed over the lines of two companies and there had been a conveyance in fact as distinct from a contract to convey over both railways by the contracting railway company.

In *L. & Y. Ry. Co. v. Gidlow*, 42 L. J. Ex. 129, the railway company's special Act authorised a six-miles minimum charge, with a proviso that their own line and any other line of which they were joint owners were to be regarded as one railway. Goods were conveyed over their own line for less than six miles, and then over a line partly owned by them but managed by another company for more than six miles under two consignment notes in the separate names of the two respective companies. The House of Lords held that the contract of carriage could not be divided, and that the two lines must be treated as one railway.

Sect. 18 of the Regulation of Railways Act, 1868, enacted that "where two railways are worked by one company then in the calculation of tolls and charges for any distance in respect of traffic . . . conveyed on both railways, the distance traversed shall be reckoned continuously on such railways as if they were one railway."

It is possible that sect. 34 of the Railways Act, 1921 (*ante*, p. 233, is sufficiently wide in its scope to have repealed the above enactment. In any case, the practice of railways being worked by a company other than the owning company has ceased as a result of the amalgamations effected by the above Act of 1921.

Sect. 47 (7) of the Act provides that, in calculating through

rates or fares, the standard charge for each portion of the route shall be the same as if the mileage throughout had been continuously upon one railway. See *post*, p. 348. Ch. XVII.  
Art. 174.

### COLLECTION AND DELIVERY CHARGES.

175. Sect. 49 of the Railways Act, 1921, enacts:—

(1) On and after the appointed day a railway company may collect and deliver by road any merchandise which is to be or has been carried by railway and may make reasonable charges therefor in addition to the charges for carriage by railway, and shall publish in the rate book kept at the station where it undertakes the services of collection and delivery the charges in force for the collection and delivery of merchandise ordinarily collected and delivered.

(2) Any such company may, and upon being required to do so and upon payment of the proper charges shall, at any place where the company holds itself out to collect and deliver merchandise, perform the services of collection and delivery in respect of such merchandise as is for the time being ordinarily collected and delivered by the company at that place:

Provided that the company shall not be required to make delivery to any person who is unwilling to enter into an agreement terminable by him on reasonable notice for the delivery by the company at the charges included in the rate book of the whole of his traffic, or the whole of his perishable traffic, from the station at which those charges apply.

(3) Where any person does not so agree, the company shall not be required to deliver any of his merchandise, but, if such person fails to take delivery of

Ch. XVII.  
Art. 175.

any merchandise within a reasonable time, the company may deliver such merchandise and make such reasonable charges therefor as it thinks fit.

(4) Any dispute as to whether or not any charge for the services of collection and delivery is reasonable, or whether the length of notice for the termination of an agreement under this section is reasonable, shall be determined by the Rates Tribunal.

Clause 11 (1) (ii) of the Fifth Schedule of the Act further authorises a railway company to charge a reasonable sum for "the collection or delivery outside a terminal station otherwise than is provided by sect. 49 of this Act of merchandise which is to be or has been carried by railway." The "reasonable sum" is to be settled, if necessary, by the Rates Tribunal. See Clause 11 (2) of the above Schedule, *post*, pp. 291 and 298.

Sect. 49 of the above Act takes the place of, and re-enacts as from the appointed day (see sect. 34 of the Act), sect. 5 (ii) of the Schedule to the Standard Rates and Charges Orders, 1891—2.

It has been hitherto customary for railway companies to collect and deliver goods and parcels in the large towns served by them, in most cases as being incidental to their main business and without express statutory powers.

The rates usually quoted and charged for goods included in clauses 1 to 5 of the old classification have been C and D rates, *i.e.* inclusive of collection and delivery, and where these services were not rendered the trader was entitled to a rebate in respect of the unperformed service. See *Fishbourne v. Gl. S. & W. Ry. Co.*, 2 Ry. & Can. Ca. 224; *Menzies v. Cal. Ry. Co.*, 5 Ry. & Can. Ca. 306.

In that case the railway company were not necessarily bound to allow the trader, by way of rebate, the same amount as they charged for collection or delivery when charging for those services

separately as an addition to a "station to station rate." See *Ch. XVII. Pickfords v. L. & N. W. Ry. Co.*, 13 Ry. & Can. Ca. 31. Art. 173.

It is not clear from the decision of the Railways Commissioners and of the Court of Appeal in that case upon what principle the amount of the rebate should be based, except that Bigham, J., at p. 42 of the Report, thought that it was not to be measured by the cost which the trader would incur if he did the work himself.

In *Baxendale v. G. W. Ry. Co.*, 5 C. B. N. S. 336; 28 L. J. C. P. 81, the Court of Common Pleas regarded a railway company's business as cartage agents as being independent of their business as carriers by rail, and held that they could not manipulate their cartage charges so as to prejudice other independent carriers. See also *Garton v. Bristol & Exeter Ry. Co.*, 1 B. & S. 112; 30 L. J. Q. B. 273.

A railway company may make the same charge for collection and delivery over a wide area irrespective of actual distance traversed. See *Kempson v. G. W. Ry. Co.*, 4 Ry. & Can. Ca. 426.

Collection or delivery is a service performed off the railway company's system, and does not depend upon the nature of the vehicle by which it is done, *e.g.*, it may be done by barge or truck forwarded over a dock authority's railway. See *Port of London Authority v. Mid. Ry. Co.*, 15 Ry. & Can. Ca. at p. 35.

It will be observed that while sub-sect. 1 of sect. 49 of the above Act of 1921—and presumably the whole of that section—refers to collection and delivery by road only, clause 11 (1) (ii) of the Fifth Schedule of the Act applies to collection and delivery of every kind.

#### CHARGES ON JOINTLY OWNED LINES.

176. Sect. 51 of the Railways Act, 1921, enacts:—

"Where a railway is owned jointly by two or more railway companies (being amalgamated companies or

CH. XVII.  
ART. 178.

railway companies to which a schedule of standard charges has been applied) then, for the purposes of this Part of this Act—

“(a) if the route lies wholly on the railway of one of the owning companies and the jointly owned railway, the charges shall be the charges which would have been chargeable if the whole route had been over the railway of that owning company; and

“(b) in any other case, the charges in respect of the jointly owned railway shall be the charges appearing in the schedule of charges applied to that railway.”

#### CHARGES FOR COMPETITIVE TRAFFIC.

177. Sect. 52 of the Railways Act, 1921, enacts:—

“(1) Where any two places are connected by routes belonging to or operated by two or more railway companies (being amalgamated companies or railway companies to which a schedule of standard charges has been applied) and the standard rate for the carriage of merchandise by one such route is less than the standard rate by another such route, the standard rate for the carriage of merchandise by the first mentioned route may, subject to the provisions of this section as to circuitous routes, be charged as the standard rate for the carriage of merchandise by such other route.

“(2) For the purposes of this section, a circuitous route means a route which is longer by thirty per cent. or more than the shortest route between the two places.

“(3) Within six months after the date of amalgamation or such longer time as the Minister may allow

every amalgamated company and every company liable to have applied to it a schedule of standard charges shall submit to the Minister in such form as he may direct a schedule of the circuitous routes to which it is desired that this section shall be applied. The Minister shall refer to the Rates Tribunal the schedules so submitted to him, and the tribunal shall, after giving all parties whom they consider entitled to be heard before them an opportunity of being heard, consider whether the routes contained in the said schedules are, having regard to all the circumstances, including the public interest, desirable and adequate, and shall settle the schedules accordingly, and this section shall apply to the circuitous routes contained in the schedules as settled, but, save as hereinafter provided, to no other circuitous routes.

“(4) After the settlement of such schedules any such company may apply this section to a new circuitous route not included in its schedule, but the company shall, within fourteen days, report the route to the Minister in such manner as he may direct, and, if the Minister considers that the proposal involves unreasonable competition or is not in the public interest, he may refer the matter to the Rates Tribunal who may, after giving all parties whom they consider entitled to be heard before them an opportunity of being heard, cancel the route:

“Provided that, if the proposed circuitous route exceeds by fifty per cent. or more the shortest route between the two places, this section shall not be applied thereto without the consent of the Rates Tribunal.”



## FARES ON SHIPS.

Ch. XVII  
Art. 178.

178. Sect. 53 of the Railways Act, 1921, enacts:—

“As from the appointed day, any amalgamated company or any railway company to which a schedule of standard charges has been applied whose powers of charging in respect of the conveyance of passengers and their luggage in steam or other vessels provided or used by any such company are limited by statute, may demand, take, and recover such reasonable fares as it shall think fit for and in respect of the conveyance of passengers and their luggage in such steam or other vessels, and any question as to the reasonableness of such fares shall be determined by the Rates Tribunal.”

The charges in respect of railway owned ships are not included in the schedules of standard charges to be settled by the Rates Tribunal under sect. 31 of the Act. See sect. 30, and Fourth Schedule of the Act, *ante*, pp. 221—2. On the other hand, the revenue derived from these ships is to be taken into consideration in fixing the standard revenue of the railway companies. See sect. 58 of the Act, *ante*, p. 226.

The above section (sect. 53) deals only with passenger traffic. The charge in respect of merchandise traffic carried by railway owned ships do not appear to be subject to control.

179. A clause in a railway company's special Act limiting the rates for certain traffic, and being the result of a parliamentary contest between two railway companies, has the effect, not merely of a contract between the two companies, but of a statutory obligation which may be enforced by any person chargeable with the rates for such traffic. *D. Davis & Sons, Ltd.*

*v. Taff Vale Ry. Co.*, [1895] A. C. 542; 64 L. J. CH. XVII.  
Q. B. 488. Art. 178.

If a person sending goods, in ignorance of the fact that the rates charged to him exceed those authorized by law, pays the amount demanded by the railway company, he can, upon discovering the facts, sue the company, and recover as damages the difference between the sum paid and that which the company was by law entitled to demand. *Same Case*, [1895] A. C. at p. 548.

**180.** Where any question or dispute arises, involving the legality of any toll, rate, or charge, or portion of a toll, rate, or charge, charged or sought to be charged for merchandise traffic by a railway company or a canal company, the Railway and Canal Commissioners have jurisdiction to hear and determine the same, and to enforce payment of such toll, rate, or charge, or so much thereof as the Commissioners decide to be legal. Railway and Canal Traffic Act, 1888, s. 10.

It is to be observed that the above section only applies to merchandise traffic. The Railway Commissioners have therefore no jurisdiction to entertain an application as to alleged excess charges in connection with passenger traffic unless a failure to comply with sect. 2 of the Traffic Act, 1854, is in fact proved. See *G. W. Ry. Co. v. Railway Commissioners and Brown*, 7 Q. B. D. 182; 50 L. J. Q. B. 483; 3 Ry. & Can. Tr. Ca. 523.

Under the above section the Railway Commissioners have jurisdiction to determine the identity of an article to which a disputed charge is sought to be applied. *Thos. Ward, Ltd. v. Mid. Ry. Co.*, [1917] 2 K. B. 278; 86 L. J. K. B. 752; 16 Ry. & Can. Ca. 178.

## CHAPTER XVIII.

## DISINTEGRATION AND PUBLICATION OF RATES.

*Disintegration of Rates.*

Ch. XVIII.  
Art. 181.

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181. Sect. 40 of the Railways Act, 1921, enacts:—

“(1) Where application is made to the Rates Tribunal to fix or sanction any exceptional rate for the carriage of merchandise between two stations, or between a station and a siding, or between two sidings, or between either a station or a siding and a junction, the Rates Tribunal in fixing or sanctioning the exceptional rate shall determine the amounts (if any) to be included in the rate for the following services:—

“(a) conveyance (a);

“(b) station terminals (b);

“(c) service terminals (c);

“(d) accommodation provided and services rendered at or in connection with a private siding (a).

“(2) Where an amalgamated company or a railway company to which a schedule of standard charges has been applied grants an exceptional rate for the carriage of merchandise between two stations, or between a station and a siding, or between two sidings, or between either a station or a siding and a junction, without referring to the Rates Tribunal, and the company shows in the quotation for the rate and in the

(a) See note on p. 264.

(b) *Ibid.*

(c) *Ibid.*

rate book (*d*) the amount (if any) included therein for such several services as aforesaid, the disintegration (*e*) of the exceptional rate as so shown shall be conclusive unless a trader interested in the rate complains that the amount allocated to any particular service is unreasonable, in which event the onus of proof shall be on the railway company.

Ch. XVII.  
Art. 101.

“(3) Where any such company in granting such an exceptional rate has not distinguished in the quotation for the rate or in the rate book the amounts included therein for such several services as aforesaid—

“(a) the rate, in the case of a station-to-station rate, shall be deemed (*f*) to be composed of conveyance rate and terminal charges in proportion to the amounts included in the corresponding standard rate for the same service and accommodation in respect of similar goods between the same stations; and

“(b) in the case of any other rate, the company shall, within fourteen days after application in writing by any person interested in the disintegration of the rate, afford that person information of the amounts (if any) included in the rate for the several services aforesaid.

“(4) Any dispute as to the disintegration (*e*) of any such exceptional rate shall be determined by the Rates Tribunal at the instance of either a trader or the railway company.

“(5) For the purposes of determining any question of an alleged undue or unreasonable preference (*g*) or advantage, the Railway and Canal Commission shall not have regard to the separate component parts of

(*d*) See note on p. 264. (*e*) *Ibid.* (*f*) See note on p. 267. (*g*) *Ibid.*

CH. XVIII.  
Art. 181.

any rate as shown in the rate book or as determined by this section, but shall, unless in any case in which an application has been made for the purpose it is proved to the satisfaction of the Commission that a consideration of the component parts of the rate would be fair and reasonable, determine the question in reference to the total rate for carriage applicable to the merchandise in respect of which such undue or unreasonable preference or advantage is alleged to arise and the conditions under which the rate applies.''

(a) The meaning of "conveyance" and its relation to private siding services are dealt with at pp. 286 and 301, *post*.

(b) "Station terminals" mean the use of accommodation provided and the duties undertaken by a railway company as carriers at the terminal station. See *post*, p. 304.

(c) "Service terminals" mean loading, unloading, covering and uncovering when performed by the company. See *post*, p. 304.

(d) As to the rate books to be kept by a railway company, see sect. 54, sub-sects. (3) to (6) of the Act; *post*, p. 268. The former statutory obligations as to rates books contained in sect. 14 of the Regulation of Railways Act, 1873, sect. 34 of the Railway and Canal Traffic Act, 1888, and sect. 3 of the Railway and Canal Traffic Act, 1894, are repealed as from the appointed day by sect. 86 and the Ninth Schedule of the Railways Act, 1921, save as to light railway and canal companies.

(e) The provisions of sect. 14 of the Regulation of Railways Act, 1873, and of sect. 33 (3) of the Railway and Canal Traffic Act, 1888, relating to this subject are repealed as from the appointed day by sect. 86 and the Ninth Schedule of the Railways Act, 1921, save as to light railway and canal companies.

Sect. 17 of the Regulation of Railways Act, 1868, which deals with this matter is still in force.

The following decisions under the above repealed sections may be referred to:—

Ca. XVII.  
Art. 181.

A railway company were not required, under sect. 14 of the Act of 1873, to show how the through rates quoted by them were divided between the railway companies receiving them. *Watkinson and others v. Wrexham, &c. Ry. Co.* (No. 3), 3 Ry. & Ca. Ca. 446.

A railway company were bound to disintegrate a rate under that section, although the rate charged was a lump sum rate fixed by the company in order to compete with other companies. *Bailey v. L. C. & D. Ry. Co.*, 2 Ry. & Ca. Ca. 99.

Where it was proved in evidence that nothing was included in a parcels rate except the carriage on the railway, the Commissioners refused to make an order. *Robertson v. Midland Great Western Ry. Co.*, 2 Ry. & Ca. Ca. 409.

Where, to an application under sect. 14 of the Act of 1873, the railway company answered that the rates charged were mileage rates within their Parliamentary powers, and were not made up of separate sums, the Commissioners held that an order to disintegrate such rates should be made, as it did not follow that the whole of each rate was for conveyance only and that part was not for other expenses. *Jones v. N. E. Ry. Co.*, 2 Ry. & Ca. Ca. 208.

An order was made only as to rates which were being charged by a railway company at the time of the application, *Hall v. L. B. & S. C. Ry. Co.*, 4 Ry. & Can. Ca. 398, but the withdrawal of rates by a railway company, after an application had been made to the Railway Commissioners, did not disentitle an applicant to an order calling on the company to distinguish how the rate was made up. *Berry v. L. C. & D. Ry. Co.*, 4 Ry. & Can. Ca. 310.

It being the duty of a railway company to inform any person interested, and applying to it for information, how much of each local and through rate in its entirety was for conveyance, and how much was for other expenses, specifying the nature and detail of such other expenses, if the information was withheld, the Railway Commissioners ordered it to be given, and to be made public by

**Ch. XVIII.** proper entries in the rate book, and ordered the railway company to pay the costs of the proceedings. *Cairns v. N. E. Ry. Co.*, and *Coxon v. N. E. Ry. Co.* (No. 1), 4 Ry. & Can. Ca. 221; *Watkinson and others v. Wrexham, Mold, and Connah's Quay Ry. Co.* (No. 3), 3 Ry. & Can. Ca. 446.

Under the repealed sect. 14 of the Regulation of Railways Act, 1873, it was held that the words "specifying the nature and detail of such other expenses" required a railway company to state in their rate book what terminal services they undertook to perform with regard to the particular traffic, and how much they charged for each of such terminal services, and a railway company did not sufficiently comply with the section by giving a list of the various terminal services which they performed, and stating what their total charge was for the whole of these services. *Colman v. G. E. Ry. Co.*, 4 Ry. & Can. Ca. 108.

The details to be given under the same section were required to be such as to enable the person paying the rates and the Commissioners to say whether an expense charged for in the rate was an expense for which the railway company could properly charge. *Birchgrove Steel Co. v. Midland Ry. Co.*, 5 Ry. & Can. Ca. 229.

In *Pelsall Coal, &c. Co., Ltd.*, and *L. & N. W. Ry. Co.* (No. 1), 23 Q. B. D. 536; 7 Ry. & Can. Ca. 1, Wills, J., expressed the opinion that the expression "person interested" in sect. 14 of the Act of 1873 included not only the person who paid the rate in question, but also any person who made out by proper evidence that the rates which he sought to have dissected were really and substantially "competitive rates with his own," i.e., rates paid by his competitors in trade.

The owner of a private railway communicating with the line of a railway company who hands over to and receives from such company traffic at the junction of the two railways was a "person interested" within the above section. *Tomlinson v. L. & N. W. Ry. Co.*, 7 Ry. & Can. Ca. 22.

The Railway Commissioners had a discretion under sect. 14 of the Act of 1873 as to what they would order, and, if they thought

fit, they might refuse to order the insertion of the required information in the rate book, provided it was given to the trader who made the application. *Pickford's, Ltd. v. L. & N. W. Ry. Co.*, 12 Ry. & Can. Ca. 154.

In *New Union Mill Co. v. G. W. Ry. Co.*, [1896] 2 Q. B. 290; 9 Ry. & Can. Ca. 152, the Railway Commissioners, upon an application made to them under sect. 14 of the Act of 1873, held that the railway company were bound to render an account of the charge made for the carriage of the merchandise, and in such account, unless the entire charge was stated to be for conveyance alone, and not in part a charge made for any other service or expense, to divide such charge, and to distinguish the charge for conveyance over the railway from terminal charges, and dock charges, and if any terminal or dock charge was included in such account, to specify the nature and detail of the same.

In Scotland it was held that the obligation to distinguish rates imposed by sect. 33 (3) of the Act of 1888 applied to siding-to-siding rates, and that the expression "terminal charges" included the services mentioned in sect. 5 of the schedule to the former Standard Rates and Charges Orders, 1891—2. *Hamilton & Calder v. Cal. Ry. Co.*, 43 Scot. L. R. 696.

In *Smith, Stone and Knight v. Midland Ry. Co.*, 15 Ry. & Can. Ca. 327, the Railway Commissioners held that a trader was entitled to an order for disintegration of rates provided that he was *bonâ fide* interested in the traffic, although the information so obtained was in the nature of discovery in proceedings pending in their Court.

(f) This rule was first adopted in *Pidcock v. M. S. & L. Ry. Co.*, 9 Ry. & Can. Ca. 45, and is generally known as "the rule in *Pidcock's Case*." It, however, has not always been followed. See judgment of Wright, J., in *Vickers v. Mid. Ry. Co.*, 11 Ry. & Can. Ca. 249.

(g) As to undue preference, see *post*, p. 373.

In *Gt. S. & W. Ry. Co. v. City of Cork Steam Packet Co.*, 15 Ry. & Can. Ca. 67, the Irish Court of Appeal, affirming



CH. XVIII. the decision of the Railway Commissioners, held that through  
Art. 181. land and sea rates are not to be apportioned according to mileage.

### PUBLICATION OF RATES AND RATE BOOKS.

182. Sect. 54 of the Railways Act, 1921, enacts:—

“(1) The schedules of standard charges and the standard terms and conditions of carriage when settled in accordance with the provisions of this Part of this Act, and any orders of the Rates Tribunal modifying standard charges or standard terms and conditions shall be deemed to be statutory rules within the meaning of the Rules Publication Act, 1893, but nothing in this provision shall be construed as making any such schedules or orders statutory rules to which section one of that Act applies.”

Sect. 1 of the above Act of 1893 (which is not to apply to the above schedules and conditions) provides for the publication of proposed statutory rules in the *London Gazette*, and enable any interested public body to make representations as to the same.

“(2) Printed copies of the general classification of merchandise and schedule of standard charges for the time being in force shall be kept for sale by every railway company to which the same apply at such places and at such reasonable prices as the Minister may direct.

See *ante*, p. 211, as to the general classification.

“(3) On and after the appointed day, every railway company shall keep for public inspection at each station at which merchandise is received for conveyance, or, where merchandise is received for conveyance at some other place than a station, then, at the station

nearest to such place, a copy, of the general classification of merchandise carried on the railway of the company and a book or books stating:—

- “(i) the chargeable distance from that station or place of every place to which they book;
- “(ii) the scales of standard charges applicable to each class of merchandise conveyed on the railway;
- “(iii) all exceptional rates in operation from such station or place;
- “(iv) any charges in force for the collection and delivery of merchandise at such station or place.

“The general classification of merchandise and every such book shall, during all reasonable hours, be open to the inspection of any person without the payment of any fee.”

The above sub-sect. (3) takes the place as from the appointed day of sect. 14 of the Regulation of Railways Act, 1873, and sect. 34 of the Railway and Canal Traffic Act, 1888, except so far as they relate to light railway and canal companies. A railway company was required by those sections to keep for public inspection at each of their stations books showing the rates “charged for the carriage of traffic other than passengers and their luggage . . . including any rates charged under any special contract.”

The following were decisions under the above repealed sections:—

(1) The statutory direction, that the books should be open to inspection, was equivalent to saying that there should be a publication of the rates, and gave a general right to inspect, and also to make copies or extracts. *Perkins v. L. & N. W. Ry. Co.*, 1 Ry. & Can. Ca. 327.

**Ch. XVIII.** (2) A company refusing to show their rate books at their  
**Art. 102.** stations were required to pay the costs of any proceedings which the applicants had reasonable cause for taking. *Clonmel Traders, &c. v. Waterford & Limerick Ry. Co.*, 4 Ry. & Can. Ca. 92.

(3) The book of rates which a railway company were required to keep at their station were required to show all rates, local as well as through, which were being charged from the station where the book was kept. Through rates were not required to be shown, in whole or in part, at any other station than the one from which the traffic carried at through rates was forwarded in the first instance. *Oxlade v. N. E. Ry. Co.* (No. 3), 3 Ry. & Can. Ca. 35.

(4) Where two competing railway companies granted rebates which did not appear in their rate books, the Railway Commissioners made an order enjoining them from carrying traffic at reduced rates differing from those shown in the rate books. *Gl. S. & W. Ry. Co. v. Dublin & S. E. Ry. Co.*, 13 Ry. & Can. Ca. at p. 201.

(5) The expression "rate authorised" in sect. 2 (b) of the schedule to the Standard Rates and Charges Orders, 1891—2, meant the rate chargeable for the time being, *i.e.*, the rate shown in the rate book, and was therefore not necessarily the maximum rate authorised by those Orders. *Spillers and Bakers, Ltd. v. G. W. Ry. Co.*, 14 Ry. & Can. Ca. at p. 59.

(6) Where upon a general increase of all exceptional rates the several railway companies inserted a leaflet in the front of their rate books announcing that a specific figure must be added to each old rate in order to ascertain the amount of the new rate, it was held that as no complicated calculation was involved, it was unnecessary to erase every existing rate and enter every increased rate, and the increased rates were sufficiently shown in the rate books. *British Portland Cement Manufacturers v. G. E. Ry. Co.*, 15 Ry. & Can. Ca. 213.

(7) Where a rate has been in fact put into operation it will

be regarded as an effective rate, notwithstanding that the railway company have not entered it in the appropriate rate books. *Glenaron Garw Collieries, Ltd. v. Rhondda and Swansea Bay Ry. Co.*, 16 Ry. & Can. Ca. at pp. 72 and 74. Ch. XVII.  
Art. 103.

Sect. 93 of the Railway Clauses Act, 1845, requires that all tolls charged by a railway company shall be published upon a toll board to be exhibited at the stations or places where such tolls are payable.

Sect. 94 of the same Act requires the company to set up mile-stones along their line at intervals of every quarter of a mile.

Sect. 95 of the same Act prohibits the company from taking tolls unless the said boards or milestones are respectively shown or set up.

The word "tolls" in sect. 95 of the Railways Clauses Act, 1845, relates to tolls properly so called, and not to charges for carrying passengers in the company's own carriages. *Brown v. G. W. Ry. Co.*, 9 Q. B. D. 744; 51 L. J. Q. B. 529.

"(4) On and after the appointed day, every railway company shall for a period of ten years keep open for inspection at its head office, the books, schedules, or other papers specifying the rates, charges, and conditions of transport in use on the fourteenth day of January, nineteen hundred and twenty, upon the several railways owned or worked by the company, and shall, upon demand and upon payment of a reasonable charge, supply copies of or extracts from such books, schedules, and papers.

"(5) Where a railway company carries merchandise partly by land and partly by sea all the books, tables and documents touching the rates of charge of the railway company, which are kept by the railway company at any port in Great Britain used by the vessels

Ch. XVIII.  
Art. 182.

which carry the sea traffic of the railway company, shall, besides containing all the rates charged for the sea traffic, state what proportion of any rate is appropriated to the conveyance by sea, distinguishing such proportion from that which is appropriated to the conveyance by land on either side of the sea."

The above sub-sect. (5) re-enacts sub-sect. (5) of sect. 33 of the Railway and Canal Traffic Act, 1888, which has been repealed (except as to light railways and canals) as from the appointed day by sect. 86 and the Ninth Schedule (Part II.) of the Railways Act, 1921.

In *Dublin and Manchester Steamship Co. v. L. & N. W. Ry. Co.*, 15 Ry. & Can. Ca. 88, which was a case under the above repealed sub-section of the Act of 1888, the Railway Commissioners held that the burden of making countless entries in rate books should not be cast on railway companies, and that the sub-section was sufficiently complied with if a general note was inserted in the rate book stating that the sea proportion of certain through rates was represented by a definite mileage distance. It was further there held that it was not necessary to keep a duplicate rate book at the port of destination or at every port at which a ship might call.

"(6) Any company failing to comply with the provisions of this section shall, for each offence and in the case of a continuing offence for every day during which the offence continues, be liable on summary conviction to a fine not exceeding five pounds."

## CHAPTER XIX

### MISCELLANEOUS PROVISIONS AS TO RATES.

183. Sect. 55 of the Railways Act, 1921, enacts:— Ch. XIX.  
Art. 183.

“The provisions contained in the Fifth Schedule to this Act (being provisions similar to those now contained in the various Railway Rates and Charges Orders) shall, as from *the appointed day*, apply to the amalgamated companies and the railway companies to which a schedule of standard charges has been applied.”

The Rates and Charges Orders referred to are those of all the then existing railway companies confirmed by Parliament in 1891 and 1892. These are repealed, as from the appointed but at present unnamed day, by sect 34 of the Act of 1921, except as regards any special mileage allowances thereby allotted to any portion of a railway, *e.g.*, the Severn Tunnel, which, by the Great Western Ry. Co.'s Rates and Charges Order, 1891, is to be regarded as being twelve miles in length for the purpose of calculating conveyance rates.

As to companies to which a schedule of standard charges has been applied, see sect. 33 of the Act, *ante*, p. 232.

As to the appointed day, see *ante*, pp. 221—3.

*The Fifth Schedule is as follows:—*

“1. In calculating the distance along the railway for the purpose of the charge for conveyance of any merchandise the company shall not include any portion of its railway which may in respect of that merchandise be the subject of a charge for a station terminal. Calculation of distance.

Ch. XIX.  
Art. 182.

Calcula-  
tion of  
charges on  
weight  
and  
measure-  
ment.

“2. Unless otherwise agreed between the company and the trader, all charges shall, so far as practicable, be based upon the gross weight of the merchandise when received by the company determined according to the imperial avoirdupois weight, but the Rates Tribunal may specify any articles of merchandise upon which the charges may be calculated in reference to cubic capacity, and shall prescribe the method by which the cubic contents for the purpose of charge is to be calculated.”

As to charges for timber by measurement weight, see *G. W. Ry. Co. v. Caswell & Bowdon, Ltd.*, [1904] 2 K. B. 508; 73 L. J. K. B. 834; *G. W. Ry. Co. v. Lowe*, 11 Ry. & Can. Ca. 152.

Where goods—e.g., bricks—which are carried at computed weights are of such a nature that they vary in weight from time to time, it is reasonable that the computation should be made at fairly short intervals, or that the trader should have the option of having them carried at actual weight. See *Eastwood v. L. & N. W. Ry. Co.*, 13 Ry. & Can. Ca. at p. 142.

A railway company are not bound to adhere for all time to a scale of computed weights, but may change it in order to make the charges which are based upon it correspond with the true weight of the goods. *Holbrooks, Ltd. v. L. & N. W. Ry. Co.*, 16 Ry. & Can. Ca. 154.

Traders'  
trucks.

“3.—(1) Where merchandise is conveyed in trucks not belonging to the company, the trader shall be entitled to recover from the company a reasonable sum by way of demurrage for any detention of his trucks beyond a reasonable period either by the company or by any other company over whose railway the trucks have been conveyed under a through rate or contract.

“Any difference arising under this provision shall be determined by the Rates Tribunal at the instance of either party.” CH. XIX.  
Art. 188.

This section will apply to a claim for detention of trucks during transit, and not only where the detention has occurred before or after transit. Where the time occupied in transit is proved to be in excess of the average the *onus* is on the railway company to show that the period of detention is not unreasonable. *Charrington v. L. & N. W. Ry. Co.*, [1905] 2 K. B. 437; 74 L. J. K. B. 835; 12 Ry. & Can. Ca. 171; see also judgment of Moulton, L. J., in *R. v. Marylebone County Court Judge*, [1907] 2 K. B. at p. 679.

A claim for special damage falls within this section, and is not excluded by the words “by way of demurrage.” “Demurrage” means compensation for undue detention, and implies that a truck is a profit-earning chattel. *G. W. Ry. Co. v. Phillips*, [1908] A. C. 101; 77 L. J. K. B. 306.

“3.—(2) Where merchandise conveyed in a separate truck is loaded or unloaded elsewhere than in a shed or building of the company, the company may not charge to a trader any service terminal for the performance by the company of any of the said services if the trader has requested the company to allow him to perform the service for himself, and the company has unreasonably refused to allow him to do so. Any dispute between a trader and the company in reference to any service terminal charged to a trader who is not allowed by the company to perform for himself the service shall be determined by the Rates Tribunal.”

By sect. 14 of this schedule (*post*, p. 304), service terminals are charges for loading, unloading, covering and uncovering.



**Ch. XIX.**  
**Art. 188.**

Following the existing practice as to goods which are not usually covered in transit or loaded and unloaded by the railway companies, *e.g.*, minerals, stone, pig-iron, and the like, the standard charges submitted by the companies in respect of goods of this character, which (with the exception of coal and coke) are contained in the first ten classes of the new classification, do not include any service terminal charges for the first six classes, or any loading or unloading charge for the first ten classes. Where these services are performed by the companies for which no charge is otherwise provided, a special charge may be made under sect. 11 (v) of this schedule. See *post*, p. 297.

Transshipment services in respect of goods transferred to a railway of a different gauge may be charged for under sect. 5 of this schedule.

**Charges  
for sidings  
and  
accommodation.**

“4. Nothing in this Act shall prevent the company from making and receiving, in addition to the charges authorised by this Act, charges and payments by way of rent or otherwise for sidings or other structural accommodation provided or to be provided for the private use of traders and not required by the company for dealing with the traffic for the purposes of conveyance:

“Provided that the amount of such charges or payments shall be fixed by an agreement in writing signed by the trader or by some person duly authorised on his behalf or determined, in case of difference, by the Rates Tribunal.”

A railway company could not charge a trader under the corresponding section of the Rates and Charges Orders, 1891—2 (s. 7) with the expense of providing signals, cabins and other apparatus in connection with private sidings where such expense had been incurred to satisfy the Board of Trade's requirements as to the provision of such signals, &c. upon the line (which was originally

intended for goods traffic only) being adapted for passenger traffic. Ch. XIX.  
Art. 128.  
Such works were not within the section, as they could not be described as "provided for the private use of traders and not required by the company for dealing with the traffic for the purposes of conveyance." *N. S. Ry. Co. v. Salt Union, Ltd.*, 10 Ry. & Can. Ca. 161.

A railway company may make a private siding charge under sect. 11 (1) (i) of this schedule in respect of standing room provided by them for wagons which cannot be received into the private siding owing to insufficient accommodation. *Corporation of Birmingham v. Mid. Ry. Co.*, 14 Ry. & Can. Ca. 24. See *post*, p. 289.

"5. In respect of merchandise received from or delivered to another railway company having a railway of a different gauge, the company may make a reasonable charge for any service of transhipment performed by it, the amount of such charge to be determined in case of difference by the Rates Tribunal. Charges  
for trans-  
shipment.

"6.—(1) The company may charge for the use of trucks provided by it for the conveyance of merchandise, when the provision of trucks is not included in the rates for conveyance, such sums as the Rates Tribunal determine." Charges  
for use of  
trucks.

In the Rates and Charges Orders, 1891—2, of the former Scottish railway companies, and of the former North Eastern Ry. Co., the conveyance rates included the provision of trucks for all classes of traffic. In the case of the other English railway companies, the conveyance rates did not include the provision of trucks for class A traffic. This distinction is retained in the schedules of proposed charges submitted to the Rates Tribunal by the four group companies; these provide that, as regards goods included in the first four classes of the new classification (and

**Ch. XIX.** as regards coal, coke, and patent fuel), the conveyance rates shall  
**Art. 189.** not include the provision of trucks save as to those sections of the new companies which are in Scotland, and which in the case of the L. & N. E. Co. comprise the former N. E. Co.'s system.

The Rates and Charges Orders, 1891—2, fixed definite charges proportionate to distances when the provision of trucks were not included in the conveyance rate. See sect. 9 of these Orders. Under the new system these charges are to be fixed by the Rates Tribunal.

“6.—(2) Where, for the conveyance of merchandise other than merchandise in respect of which the rates for conveyance do not include the provision of trucks, the company does not provide trucks, the charge for conveyance shall be reduced by such sum as the Rates Tribunal determine.”

Under the corresponding section of the Rates and Charges Orders, 1891—2 (sect. 2 (b)), the above deduction from the conveyance rate in the case of all the English companies, except the former North Eastern Co., was, if necessary, fixed by arbitration only for distances not exceeding fifty miles, and in other cases the deduction was the charge authorised for the provision of trucks when not included in the conveyance rate. In the case of the North Eastern and the Scottish companies, the above deduction was in all cases fixed by arbitration in case of difference.

Where the conveyance rate includes the provision of trucks, and these are not provided by the railway company, a proper deduction is to be made, even though the rate charged is less than the maximum. *Cowdenbeath Coal Co. v. N. B. and Cal. Ry. Cos.*, 8 Ry. & Ca. Tr. Ca. 251. In that case it was decided that other considerations besides mere distance affected the reasonableness of a wagon rebate, and that a scale of proposed rebates should be proportionate to the rate charged and not to the mileage of the journey. On a second point arising in the same case the

Commissioners appear to have treated the cost to the trader and the saving to the company as the same, Sir F. Peel thinking that the amount of the rebate should represent the cost to the trader of providing his own wagons (see his judgment at p. 267 of the Report), while Lord Cobham (at p. 269) adopted the saving to the company as the test. They ordered that this amount, when ascertained, was to be deducted from the rate for conveyance, although that rate was less than the maximum.

The words "where . . . the company does not provide trucks" do not apply to a case where a railway company are ready and willing to provide trucks but the trader prefers to use his own. *Spillers and Bakers, Ltd. v. G. W. Ry. Co.*, 14 Ry. & Can. Ca. 52.

In the same case the Court of Appeal, affirming the decision of the Railway Commissioners, held that a trader is not entitled, as a reasonable facility, to have ordinary merchandise conveyed in his own trucks when the railway company are ready and willing to provide trucks, and therefore where traders' trucks were used to convey their goods when the railway company were ready and willing to provide trucks, the traders were not entitled to a rebate under the corresponding section (sect. 2 (b)) of the Rates and Charges Orders, 1891—2.

But this rule apparently will not apply to coal and other mineral traffic where traders have been accustomed to provide their own trucks. See judgments of A. T. Lawrence, J., and Cozens-Hardy, M. R., in the last mentioned case, in 14 Ry. & Can. Ca. at pp. 75 and 82; see also *John Watson, Ltd. v. Caledonian Ry. Co.*, 14 Ry. & Can. Ca. at pp. 201 and 213.

"6.—(3) The company shall not be required to provide trucks for the conveyance of merchandise in respect of which the provision of trucks is not included in the rate for conveyance, nor for the conveyance of lime in bulk or salt in bulk or any merchandise liable to injure

Ch. XIX.  
Art. 188.

**Ch. XIX.**  
**Art. 103.**

trucks, but in all such cases traders shall be entitled to provide their own trucks:

“Provided that any dispute between the company and a trader as to whether any specific kind of merchandise is liable to injure trucks may be referred to the Rates Tribunal but on any such reference it shall lie on the trader requiring the merchandise to be carried to show that such merchandise will not injure the trucks.”

As to the obligation of a railway company to provide trucks, see *post*, p. 334.

The schedules of proposed charges lodged by the four group companies do not include the provision of trucks for coal, coke, and patent fuel, or for goods included in the first four classes of the new classification, except on the Scottish sections of the L. N. & E. and L. M. & S. companies, and the North Eastern section of the former company.

**Return of  
empty  
trucks.**

“7. Where merchandise is conveyed in a trader's truck, the company shall not make any charge in respect of the return of the truck empty, provided that the truck is returned empty from the consignee and station or siding to whom and to which it was consigned, loaded direct to the consignor and station or siding from whom and whence it was so consigned, and, where a trader forwards an empty truck to any station or siding for the purpose of being loaded with merchandise, the company shall make no charge in respect of the forwarding of such empty truck, provided the truck is returned to it loaded for conveyance direct to the consignor and station or siding from whom and whence it was so forwarded.”

In the absence of statutory powers a railway company are not entitled to demand a "toll" for the conveyance of empty wagons, although it would appear that a charge for this service might be made by reason of an implied contract with the owner of the wagons. See *Field v. Newport, &c. Ry. Co.*, 3 H. & N. 409; 27 L. J. Ex. 396.

Ch. XIX.  
Art. 123.

In *Harrison & Cannm v. Mid. Ry. Co.*, 5 B. 445; 62 L. J. Q. B. 225; 8 Ry. & Can. Ca. 60, the facts of which occurred prior to the passing of the Rates and Charges Acts, 1891—2, the Railway Commissioners decided that a railway company were not entitled to charge, under their special Act, for the haulage of newly-manufactured wagons to their purchasers' works, as being manufactured goods, when goods, which belonged to neither the manufacturers nor the purchasers of such wagons, were conveyed in them and a charge for the conveyance of such goods was made by the railway company.

"8. Subject to the provisions of this Act, any company conveying merchandise on the railway of another company or performing any of the services for which rates or charges are authorised by this Act, shall be entitled to charge and make the same rates and charges as such other company are authorised to make.'

Charges  
for con-  
veyance on  
railway of  
another  
company.

This section corresponds to sect. 24 of the Rates and Charges Orders, 1891—2.

Where any company conveys goods on the line of another company they may treat the transit over the foreign company's line as a separate journey, for which they are entitled to charge the maximum charge authorized by the foreign company's Act as applicable to a journey of that distance, irrespective of the distance which the goods may have been carried over the company's own line. *G. W. Ry. Co. v. Caswell and Bourden*, [1904] 2 K. B. 508; 73 L. J. K. B. 834.

**Ch. XIX.** See also *Lancashire and Cheshire Coal Association v. L. & N. W. and L. & Y. Ry. Cos.*, [1907] 2 K. B. 902; 76 L. J. K. B. 1020; 13 Ry. & Can. Ca. 8.

Dock and  
shipping  
charges.

“9. Nothing in this Act shall affect the right of a company to make any charges which it is authorised by any Act of Parliament to make in respect of any accommodation or services provided or rendered by the company at or in connection with docks or shipping places.”

Special Acts regulating the charges to be made at the docks of the four group railway companies have been passed in the present session of Parliament (1924).

The revenue from their docks is to be taken into consideration by the Rates Tribunal in fixing the standard revenue of the above companies. See sect. 58 (1) of the Railways Act, 1921, *ante*, p. 226.

Provisions  
as to  
perish-  
ables

“10. The following provisions and regulations shall be applicable to the conveyance of perishable merchandise by passenger train:—

“(a) The company shall afford reasonable facilities for the expeditious conveyance of the articles classified as perishables, either by passenger train or other similar service:

“(b) Such facilities shall be subject to the reasonable regulations of the company for the convenient and punctual working of its passenger train service, and shall not include any obligation to convey perishables by any particular train:

“(c) The company shall not be under obligation to convey by passenger train, or other similar

service, any merchandise other than perishables: Ch. XIX.  
Art. 100.

- “(d) Any question as to the facilities afforded by the company under these provisions and regulations shall be determined by the Rates Tribunal.”

The above section takes the place of Part V. of the Rates and Charges Orders, 1891—2, as from the appointed day.

The articles classified as perishables are set out in section (iii) of the new classification of merchandise as settled by the Rates Tribunal, and include *inter alia* milk, fruit, vegetables, fish, ice, cheese, meat (fresh and cooked), and bacon.

In Scotland the Court of Session held, in *Caledonian Ry. Co. v. Muirhead's Trawlers, Ltd.*, 6 Fraser, 605, that the expression “passenger train” used in a consignment note relating to perishable goods meant any train which had all the equipment and all the privileges and facilities of a passenger train, and was not merely limited to a train which in fact carried passengers.

As to reasonable facilities, see *post*, p. 312.

“11.—(1) A company may charge for the services hereunder mentioned, or any of them when rendered to a trader at his request or for his convenience a reasonable sum:—” Charges for services not otherwise provided for.

A request by a trader will be implied when by his act or omission he forces a railway company to render the service for which they claim to charge, even though he has protested against such charge.

In *Gt. S. & W. Ry. Co. v. Wallace Brothers*, 15 Ry. & Can. Ca. at p. 81, the railway company claimed to be entitled to charge for weighing coal for the traders who, although they had given the company notice “that these charges are not incurred at our request or for our convenience,” continued to avail themselves of the service. The Railway Commissioners held that the



**Ch. XIX.** notice was inoperative and that the railway company were entitled  
**Art. 188.** to make the charge.

In *Midland Ry. Co. v. Myers, Rose & Co.*, [1909] A. C. 13; [1908] 2 K. B. 356; 78 L. J. K. B. 95; and in *G. W. Ry. Co. v. Dafen Tinsplate Co.*, [1917] 2 K. B. 177; 86 L. J. K. B. 785 (cases under Part IV. of the Rates and Charges Orders, 1891—2), it was held that the provision of siding accommodation for loaded trucks during transit pending the consignees being ready to receive them was a service rendered by the desire of the traders, notwithstanding that they had protested against the charges for the same.

Where a railway company shunted a private owner's defective truck into one of their sidings and kept it there until the owner had it repaired, it was held that the shunting involved and the provision of siding room were services rendered at his desire. *L. & N. W. Ry. Co. v. Duerden*, 85 L. J. K. B. 885; 114 L. T. 590.

In *Corporation of Birmingham v. Midland Ry. Co.*, 14 Ry. & Can. Ca. 24, the railway company were compelled to provide extra storage sidings for trucks consigned to the Corporation gas-works owing to the limited and insufficient siding accommodation provided at the latter. It was held by the Railway Commissioners that the necessities of the traffic implied a request by the Corporation that such storage accommodation should be provided. A. T. Lawrence, J., said at p. 35 of the report: "It is having such works and such volumes of traffic which has determined the mode of dealing with this traffic and has imposed these services upon the railways. In my opinion, these facts constitute a request as clear as the most formal letter."

On the other hand, where owing to a trader's exceptionally heavy traffic the ordinary unloading sidings at a station were fully occupied and it became necessary to keep trucks consigned to him in storage sidings, it was held that this latter service was not rendered at his desire and could not be charged for. *G. W. Ry. Co. v. Laing*, 39 Times L. R. 93.

“11.—(1) (i) Services rendered by the company at or in connection with sidings not belonging to the company in respect of which no rate or charge is otherwise provided;”

Ch. XII.  
Art. 122.

This sub-section corresponds to sect. 5 (i) of the Rates and Charges Orders, 1891—2, with the addition of the words “in respect of which no rate or charge is otherwise provided.”

The words “belonging to the company” do not mean belonging in a legal sense as being owners of real property. It is possible for a siding to be on the freehold of a railway company, and yet not to belong to the company within the meaning of the above section. *Huntington and others v. L. & Y. Ry. Co.*, 11 Ry. & Can. Ca. 237.

Where a railway company conveyed certain surplus land to a trader, and the trader in accordance with the provisions of the deed of conveyance erected certain buildings on the land, and constructed and kept in repair a siding connecting such buildings with the company's railway, the company having the right to use the siding for shunting purposes, the Railway Commissioners held that the siding was not one belonging to the company. *Pidcock v. M. S. & L. Ry. Co.*, 9 Ry. & Can. Ca. 45.

See also *Girardot v. G. E. Ry. Co.*, 11 Ry. & Can. Ca. 244.

By sect. 19 of this schedule “siding” includes branch railways not belonging to a railway company.

In *M. S. & L. Ry. Co. v. Pidcock* (No. 2), 10 Ry. & Can. Ca. 150, it was held that taking trucks across the railway company's goods yard to a private siding which had no direct connection with the main line was a special service under the corresponding section of the Rates and Charges Orders, 1891—2.

It was held in *Cowan v. N. B. Ry. Co.* (No. 1), 10 Ry. & Can. Tr. Ca. 169, that where haulage over harbour lines not belonging to the railway company was a service at or in connection with a siding, an arbitrator had jurisdiction to determine

Ch. XIX.    what was a reasonable charge for that service, and that it did not  
Art. 189.    affect the question that the company might decline to perform  
such haulage if they considered it unremunerative at the price  
fixed by the arbitrator.

The question which usually arose under the corresponding subsection of the Rates and Charges Orders, 1891—2, was whether the private siding service was part of conveyance or a separate service.

As to the meaning of "conveyance," see *post*, p. 301.

In *Foster Brothers v. G. E. Ry. Co.*, [1920] 2 K. B. 574; 89 L. J. K. B. 612; 16 Ry. & Can. Ca. 337, the Court of Appeal held that the test to be applied was whether under the earlier conditions of railway practice an independent carrier—as distinct from the railway company acting as conveyers—if he had been carrying on business at the station in question, would have done the work for which a separate charge was claimed, or whether the railway company, acting as conveyers, would have done it. In practice it is not easy to apply this test, as was seen when this case again came before the Railway Commissioners. See 17 Ry. & Can. Ca. 1.

In *Foster's Case* part of the extra haulage performed by the railway company for the private siding owner coincided with a similar service rendered for the traffic using the company's station at Cambridge, and the point was whether this piece of haulage, *i.e.*, from the sidings in which the train engine deposited the trucks to the place where the station trader took delivery, was part of "conveyance." But the facts in that case were exceptional, and it may be doubted whether it was ever a general practice for an independent carrier to haul trucks between the railway and his private station.

The two cases, namely, *Hall v. L. B. & S. C. Ry. Co.*, 15 Q. B. D. 505; 5 Ry. & Can. Ca. 28; and *Sowerby v. G. N. Ry. Co.*, 7 Ry. & Can. Ca. 156, upon which the Court of Appeal based their decision in *Foster Brothers v. G. E. Ry. Co.*, *supra*,

were cases relating to station and not private siding traffic, but a question as to shunting was raised in the latter case. Ch. Art. 188.

Conveyance is not necessarily completed when the conveying train or the train locomotive ceases to haul, for the trucks must be placed clear of the running system. Further, a railway company are only entitled to make a charge for haulage and shunting performed after "conveyance" which are reasonably necessary to bring trucks from the conveyance terminus to the private siding. They cannot charge for operations which they perform in order to facilitate the general working of their traffic. See judgment of Atkin, L. J., in *Foster Brothers v. G. E. Ry. Co.*, *supra*, 16 Ry. & Can. Ca. at pp. 369 and 370.

In *Furness Ry. Co. v. Vickers, Sons & Maxim, Ltd.*, 12 Ry. & Ca. Tr. Ca. 81, trucks were first shunted off the running line by the train engine, and were then taken by a yard engine to various sidings in the company's goods yard; they were then hauled at regular intervals by an engine belonging to the railway company over a branch line of the railway company for a distance of 54 chains, and delivered to the defendants at a point where their private siding joined the said branch. It was decided that the railway company were entitled to charge for the above work as special services, such services being held to include any service done by a railway company in the delivery of traffic which is not incidental to conveyance and which is occasioned by the place of delivery being at a private siding.

In the same case it was doubted whether a railway company had power to charge for providing the site and constructing the lines on which the services are rendered.

In *M. S. & L. Ry. Co. v. Pidcock* (No. 2), 10 Ry. & Ca. Tr. Ca. 150, the railway company claimed to charge as for a special service for work performed by them in taking trucks to and from their own station sidings to the respondent's private siding, which operation took from 20 to 30 minutes on each occasion. It was impossible to shunt the trucks directly from the main line into the private siding. The Railway Commis-

**Ch. XIX.** sioners held that this was a special service. The grounds on  
**Art. 189.** which Sir F. Peel based the judgment of the Court in this case were, however, disapproved by Lush, J., in *Foster Brothers v. G. E. Ry. Co.*, 17 Ry. & Can. Ca. at p. 28.

The conveyance rate will include the shunting of trucks directly from the main line into a private siding and *vice versa*, provided that the mode in which the junction has been effected is such that a railway company need incur no greater expense in connection with it than is involved in stopping a train specially at the junction siding, and either uncoupling trucks there and depositing them in the siding clear of the points, or drawing out trucks ready marshalled and attaching them to the train. See *Portway v. Colne Valley Ry. Co.*, 10 Ry. & Can. Ca. 211.

What is a reasonable time occupied by this process depends on the circumstances of each case. See *N. S. Ry. Co. v. Salt Union, Ltd.*, 10 Ry. & Can. Ca. 161; and *Cowan v. N. B. Ry. Co.*, 10 Ry. & Can. Ca. 169. In *Cowan's Case* it was held that the conveyance rate included a claim by the railway company for time lost by the reduced speed caused by the stopping and starting of a train in connection with its stoppage at a private siding, as this was part of the service of delivery, and also included a claim made in respect of time occupied in uncoupling trucks and putting them past the points.

It is sometimes impossible for the traffic to be shunted directly into a private siding. In such a case, where the train, by which the private siding traffic arrives, conveys it as near to its destination as such a train on the particular portion of line in question can be reasonably expected to come, and deposits it for delivery in reception sidings or at such point as is best fitted for the purpose, the subsequent taking of the traffic from the reception sidings or other point of deposit belongs, as a general rule, to the process of delivery and not to that of conveyance, and an extra charge can be made in respect of such delivery. See *Vickers, &c., Ltd. v. Mid. Ry. Co.*, 11 Ry. & Can. Ca. 249.

A railway company may charge reasonable sums in respect

## RAILWAY RATES AND CHARGES.

of special services at a private siding for (1) clerkage; (2) the provision and working of extra signals that may be required by reason of the traffic to and from such private siding. *Portway v. Colne Valley Ry. Co.*, 10 Ry. & Can. Ca. 211. On.  
Art.  
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Where, owing to the lack of sufficient private siding accommodation in a trader's works, a railway company are compelled to provide storage siding accommodation for trucks waiting to be sent on to the private siding, the company may charge for this service under the above sub-section. *Corporation of Birmingham v. Mid. Ry. Co.*, 14 Ry. & Can. Ca. 24; *Cal. Ry. Co. v. Stein & Co.*, 16 Ry. & Can. Ca. 280.

It is the duty of a siding owner to deliver loaded trucks coming from his siding in a condition reasonably fit for conveyance, that is, arranged in such order that they may be attached to the appropriate train without an unreasonable amount of shunting. Where this extra shunting or "sorting" is necessary, it is a private siding service for which a charge may be made. *Corporation of Birmingham v. Mid. Ry. Co.*, 14 Ry. & Can. Ca. at pp. 37 and 45. It is immaterial whether the sorting is done at the private siding or at the nearest convenient point. See *Littleton Collieries, Ltd. v. L. & N. W. Ry. Co.*, 16 Ry. & Can. Ca. 169.

Sect. 4 of the Railway and Canal Traffic Act, 1894, gave the Railway Commissioners power to determine claims made by private siding owners for rebates on the ground that the rates charged them included charges for station accommodation and terminal services of which they did not get the benefit. This section is repealed, as from the appointed day, by sect. 86 and the Ninth Schedule (Part ii) of the Railways Act, 1921; and the Rates Tribunal do not appear to have any express power to entertain claims of this kind. Presumably the authors of the above Act thought the private siding owner is protected, inasmuch as existing exceptional rates can only be continued by agreement between a railway company and a trader under sect. 36 (1) (b) of the Act. while in settling new exceptional rates under sect. 40

CH. XIX. of the Act, the Rates Tribunal are to allocate a separate amount  
Art. 189. to accommodation and services at private sidings.

It was the usual practice for a railway company to set off against a claim by a trader for a siding rebate the value of services rendered by the company at or in connection with the trader's siding. The two subjects were thus closely connected under the former practice.

In view of the above mentioned repeal of sect. 4 of the Railway and Canal Act, 1894, it does not appear to be necessary to deal with the cases decided under that section at any great length.

Shortly, the result of those cases was as follows:—

1. It was necessary that the siding owner should give *prima facie* evidence that the rate charged to him included a charge for station accommodation and/or terminal services. *Salt Union v. N. Staffs Ry. Co.*, 10 Ry. & Can. Ca. 179.

2. Where station accommodation and/or terminal services were provided for similar traffic to that of the siding owner, and the same rates were charged in both cases, there was evidence that such rates included charges for station accommodation or/and terminal services, and the siding owner was *prima facie* but not necessarily entitled to a rebate. *Gilstrap v. G. N. & Mid. Ry. Cos.*, 11 Ry. & Can. Ca. 265; *Muntz's Metal Co. v. L. & N. W. Ry. Co.*, 14 Ry. & Can. Ca. 284.

3. It was necessary to show that the respective traffics at the station and at the private siding were substantial and bore a reasonable proportion to each other. *Cowan v. N. B. Ry. Co.* (No. 3), 11 Ry. & Can. Ca. 271; 4 F. 334; *Chance and Hunt v. G. W. Ry. Co.*, 15 Ry. & Can. Ca. 241; and in calculating the amount of traffic using the station, regard would be had to the trader's own traffic. See *Chance and Hunt v. G. W. Ry. Co.*, 15 Ry. & Can. Ca. at p. 259.

4. The amount of the rebate was generally calculated in accordance with the rule in *Pidcock's Case* (see *Pidcock v. M. S. & L. Ry. Co.*, 9 Ry. & Can. Ca. 45), but not necessarily

3. See *Vickers v. Mid. Ry. Co.*, 11 Ry. & Can. Ca. 249; *Hilstrap v. G. N. & Mid. Ry. Cos.*, 11 Ry. & Can. Ca. 265. Ch. XIX.  
Art. 188.

The so-called rule in *Pidcock's Case* is 'that where the total rate charged is less than the sum of the maximum charges for conveyance and station and service terminals, the charges for terminals shall be deemed to be in the same proportion to the rate actually charged as the corresponding maximum charges are to the total maximum rate.

This rule has been adopted by sect. 40 (sub-sect. 3) of the Railways Act, 1921, in the disintegration of exceptional rates.

Pending the appointed day, the private siding charges which were in force at the passing of the Railways Act, 1921 (19th August, 1921), are to remain in force, with power to the Rates Tribunal to determine any difference that may arise with regard to them. See sect. 61 of the Railways Act, 1921.

"11.—(1) (ii) The collection or delivery outside a terminal station. otherwise than is provided for by section forty-nine of this Act. of merchandise which is to be, or has been, carried by railway;"

Sect. 49 of the Act (see *ante*, p. 255) deals with collection and delivery by road. A railway company may collect or deliver in other ways, *e.g.*, by barge, or by truck, or over a dock siding. See *Port of London Authority v. G. E. Ry. Co.*, 15 Ry. & Can. Ca. at p. 34.

"11. —(1) (iii) Weighing merchandise;"

Sect. 98 of the Railways Clauses Act, 1845, requires a consignor of goods to give an account in writing of their number and weight.

Where a railway company weighed empty wagons on a weigh-bridge and then weighed them in the same way when loaded



Ch. XIX.  
Art. 183.

with coal, thus enabling the trader to supply the necessary particulars for filling in the consignment note, it was held by the Railway Commissioners that the railway company were entitled to charge for weighing the coal. *G. S. & W. Ry. Co. v. Wallace Brothers*, 15 Ry. & Can. Ca. 75.

In *L. & N. W. Ry. Co. v. Price*, decided in 1883, 11 Q. B. D. 485; 52 L. J. Q. B. 754, the railway company allowed the defendant to use a weighing machine belonging to the company for the purpose of weighing out coal to the defendant's customers, and it was held that the company were entitled to make a reasonable charge for the use of the machine, although they had no express statutory powers to do so. It is doubtful whether the provisions of the above sub-section would apply to such a case as "weighing merchandise" appears to contemplate, the service being performed by the railway company themselves.

"11.--(1) (iv) The detention of trucks or the use or occupation of any accommodation before or after carriage beyond such period as shall be reasonably necessary for enabling the company to deal with the merchandise as carriers thereof, or the consignor or consignee to give or take delivery thereof; or, in cases in which the merchandise is consigned to an address other than the terminal station, beyond a reasonable period from the time when notice has been delivered at such address that the merchandise has arrived at the terminal station for delivery and services rendered in connection with such use and occupation."

In the above sub-section the expression in the second line "before or after carriage" is substituted for "before or after conveyance," which was the expression used in the corresponding

sub-section (sect. 5 (iv)) of the Rates and Charges Orders, Ch. XIX, Art. 100.  
 1891—2. The word "carriage" has a wider meaning than "conveyance," and implies that the railway company have done their part both as conveyers and carriers. See *Foster Brothers v. G. E. Ry. Co.*, [1920] 2 K. B. 574; 89 L. J. K. B. 612; 16 Ry. & Can. Ca. 337.

"Detention of trucks" refers to the railway company's trucks. "Use or occupation of any accommodation" in general refers to the occupation of the company's siding by a trader's truck. See *Manchester Federation of Coal Traders v. L. & Y. Ry. Co.*, 10 Ry. & Can. Ca. 127.

"Detention of trucks" includes detention of sheets. See *N. B. Ry. Co. v. Coltness Iron Co.*, 14 Ry. & Can. Ca. 246.

Opinions as to what is a reasonable period for giving or taking delivery and as to what are reasonable charges for truck demurrage or siding rent have varied from time to time. The tendency has been for the reasonable period to decrease, and for the reasonable charge to increase.

The railway companies in many cases have issued circulars to their customers informing them that definite demurrage charges will be made after the expiration of certain free periods. See, for example, *N. B. Ry. Co. v. Coltness Iron Co.*, *supra*. They also have printed on the back of their consignment and advice notes conditions which state that a named demurrage charge—in the case of a company's truck—and a named siding rentcharge—in the case of a trader's truck—would be made at the expiration of certain free periods.

Demurrage and siding rent charges were fixed by directions issued by the Minister of Transport under sect. 3 (1) (c) of the Ministry of Transport Act, 1919, and were to be deemed to be reasonable under sect. 3 (1) (c) of that Act. These charges varied, subject to later modifications, according to the class and size of the truck, from 3s. to 30s. The free periods allowed were: (a) In the case of trucks awaiting loading before conveyance, one day, exclusive of the day on which the truck was

**Ch. XIX.** placed at the trader's disposal; and (b) in the case of loaded  
**Art. 188.** wagons after conveyance, two days after the truck was placed at the trader's disposal at a private siding, or after notice of arrival at a station. Three free days after the day of arrival were allowed at ports, after conveyance, for trucks containing shipment traffic. While the charges authorised under that Act continued in force, a trader was not entitled to have the charges, as fixed by the Minister for the detention of trucks, referred to arbitration. See *N. B. Ry. Co. v. Steel Co. of Scotland* (1922), Sess. Ca. (H. L.) 132.

These charges remained in force under sect. 3 (1) (e) of the Ministry of Transport Act until the 15th August, 1921, and they have continued to be in force under sect. 60 of the Railways Act, 1921, subject to the right of a trader to apply for a reduction under that section to the Rates Tribunal.

But apart from this provisional arrangement, it would appear that, after the appointed day, a trader will not be bound by the amount of a demurrage charge named in any circular or condition on a consignment note, even though he has notice of it, unless he in fact agreed to the same. See *L. & N. W. Ry. Co. v. Jones*, [1915] 2 K. B. 35; 84 L. J. K. B. 1268. This is the result of the decision of the Court of Appeal in *Midland Ry. Co. v. Myers, Rose & Co.*, [1908] 2 K. B. 356, as confirmed by the House of Lords, [1909] A. C. 13; 78 L. J. K. B. 95. In that case the railway company had given notice to the traders that they would make a demurrage charge of 6d. a day in the case of their trucks being detained under certain circumstances. The traders protested, but continued to have their traffic forwarded and to cause the detention of the trucks, thereby incurring the above demurrage charge. It was held that, although in the ordinary course a contract by the traders to pay the 6d. ought to have been inferred, yet, inasmuch as the railway company's power to charge was controlled by their Rates and Charges Order, 1891, the trader was entitled to have the reasonableness of the charge decided in accordance with the above Order (in that case

by a jury, the service in question coming within Part IV. of the Order), and this, notwithstanding that, under Part IV. of the Order, the company had power to charge such reasonable sum as they might think fit. Ch.  
Art.

It is true that, in *G. W. Ry. Co. v. Dafen Tinsplate Co.*, [1917] 2 K. B. 177; 86 L. J. K. B. 785, Sankey, J., held that the traders were bound by the terms of a circular sent them to pay the named demurrage charges therein stated, but, unless there was evidence in that case of an express agreement to pay these amounts, it would appear that, in accordance with the decision in *Myers Rose's Case*, *supra*, the traders were entitled to have the reasonableness of the actual amounts decided by the Court, and were not bound by those named in the circular.

The same observation would seem to apply to the case of *L. & N. W. Ry. Co. v. Crooke*, 20 Times L. R. 506.

In *N. B. Ry. Co. v. Coltness Iron Co.*, 14 Ry. & Can. Ca. 246, the railway company sent a circular to the traders giving notice that certain wagon demurrage charges would be made after certain free periods, but the Railway Commissioners went into and decided the questions as to what were reasonable charges and periods.

Where the original consignee instructs a railway company to transfer goods to a third party and the company send the latter an advice note stating that wagon demurrage will be charged after a certain period, the transferee will be liable to pay the above charge. *L. & Y. Ry. Co. v. Swann*, [1916] 1 K. B. 263; 85 L. J. K. B. 694.

Where a railway company's trucks containing goods for shipment are detained awaiting instructions from the owners of the ship on which the goods are to be shipped, the railway company may recover demurrage charges from the shipowners, since they are the persons who receive the goods from the railway. *N. B. Ry. Co. v. Clyde Shipping Co.*, 16 Ry. & Can. Ca. 251.

Where the railway company have fulfilled their part of the contract and are prepared to deliver the goods, the trader is liable

**Ch. XIX.**  
**Art. 188.**

to pay a wagon demurrage charge, although the detention is due to causes for which he is not responsible. *Glasgow & S. W. Ry. Co. v. Ballochney Coal Co.*, 16 Ry. & Can. Ca. 288.

A railway company are entitled to make a demurrage charge for the detention on their railway of trucks belonging to other companies. *Glasgow & S. W. Ry. Co. v. Ballochney Coal Co.*, *supra*; *Caledonian Ry. Co. v. Stein*, 16 Ry. & Can. Ca. 280.

Where the consignors have notice that demurrage charges will be made by the railway company, they will be liable for the same. *G. W. Ry. Co. v. Dafen Tinplate Co.*, [1917] 2 K. B. 177; 86 L. J. K. B. 785; *Glasgow & S. W. Ry. Co. v. Polquhairn Coal Co.* (1916); Sess. Ca. 36; although the railway company claiming these charges are not the company with whom the contract of carriage was made. *Glasgow & S. W. Ry. Co. v. Ballochney Coal Co.*, 16 Ry. & Can. Ca. 288.

A trader cannot set off cases in which he has detained a truck for less than the free-time period against those in which he has exceeded it. He is not entitled to keep a truck for the whole of the free time. *Mid. Ry. Co. v. Black*, 10 Ry. & Can. Ca. 142; *N. B. Ry. Co. v. Coltness Iron Co.*, 14 Ry. & Can. Ca. at p. 264.

A special charge for the detention of a railway company's trucks during transit could be made as for a special service under Part IV. of the Rates and Charges Orders, 1891—2, and presumably can be made after the appointed day under sect. 11 (1) (viii) of this schedule. See *Midland Ry. Co. v. Myers, Rose & Co.*, [1908] 2 K. B. 356; [1909] A. C. 13; 78 L. J. K. B. 95; *G. W. Ry. Co. v. Dafen Tinplate Co.*, [1917] 2 K. B. 177; 86 L. J. K. B. 785.

But where, owing in part to a trader's unusually heavy traffic, certain unloading sidings at a station were fully occupied and other trucks containing his traffic were thereby detained during transit, it was held by the Court of Appeal that the railway company were not entitled to make a demurrage charge under

Part IV. of their Rates and Charges Order, 1891. *G. W. Ry. Co. v. Laing*, 39 Times L. R. 93. Ch. XII.  
Art. 188.

A charge for detention of trucks or for siding rent is not an increase of rate. *Manchester Federation of Coal Traders v. L. & Y. Ry. Co.*, 10 Ry. & Can. Ca. 127; *Midland Ry. Co. v. Stones Brothers*, 16 Ry. & Can. Ca. 261.

“11.—(1) (v) Loading or unloading, covering or uncovering, merchandise in respect of which no charge is provided;”

In the schedules of proposed standard charges lodged with the Rates Tribunal by the four group companies, no charge for loading or unloading is contained in the rates for coal, coke and patent fuel, or for the goods included in the first ten classes of the new classification. In the same way no charge for covering or uncovering is contained in the rates for coal, coke and patent fuel, or for goods included in the first six classes of the new classification. This in effect maintains the practice under the Rates and Charges Orders, 1891—2, whereby no charge for the above services was contained in the rates for goods included in classes A and B of the old classification.

“11.—(1) (vi) The use of coal drops;

“11.—(1) (vii) The provision by the company of accommodation at a waterside wharf and special services rendered thereat by the company in respect of loading or unloading merchandise into or out of vessels or barges where no special charge is prescribed by any Act of Parliament, provided that the charge under this sub-paragraph shall, for the purposes of any disintegration of rate, be deemed to be a dock charge;

CG. XIX.  
Act, 189.

“11.—(1) (viii) Any accommodation or services provided or rendered by the company within the scope of its undertaking, and in respect of which no provisions are made by this Schedule.”

This sub-section corresponds in part to Part IV. (Exceptional Class) of the Rates and Charges Orders, 1891—2, under which the remedy of the railway company was to sue at common law for the amount of the charges claimed by them. Under the provisions of this schedule the Rates Tribunal will decide under sect. 11 (2) as to what charge (if any) should be made, and the amount can then be recovered by action under sect. 11 (3) of this schedule. This provision applies to all services, whether obligatory or voluntary, rendered by a railway company within the scope of their undertaking. See *Mid. Ry. Co. v. Myers, Rose & Co.*, [1908] 2 K. B. 356; [1909] A. C. 13; 78 L. J. K. B. 95.

“11.—(2) Any difference arising under this paragraph shall be determined by the Rates Tribunal at the instance of either party, provided that, where before any service is rendered, a trader has given notice in writing to the company that he does not require it, the service shall not be deemed to be rendered at the trader's request or for his convenience.”

Under the corresponding section (sect. 5) of the Rates and Charges Orders, 1891—2, any difference as to the above services was to be determined by an arbitrator appointed by the Board of Trade. In practice the Board of Trade usually appointed the Railway Commissioners to act as arbitrators under sect. 6 of the Board of Trade Arbitration Act, 1874. .

Sect. 15 of the Regulation of Railways Act, 1873, which gave the Railway Commissioners power to determine questions as to terminal charges has been repealed, except as to canals, as from

the appointed day by sect. 86 and the Ninth Schedule (Part II.) of the Railways Act, 1921. Ch. XIX.  
Art. 198.

Pending the appointed day all charges in force on the 15th August, 1921, are stabilised, subject to modifications by the Rates Tribunal, under sect. 60 of the same Act.

Under the corresponding section (sect. 5) of the Rates and Charges Orders, 1891—2, an arbitrator had jurisdiction under that section to determine not only the reasonableness of the sums charged, but all questions necessarily incidental thereto. *Mid. Ry. Co. v. Losoby & Carnley*, [1899] A. C. 133; 68 L. J. Q. B. 326, in which the previous decision of the Court of Appeal in *L. & N. W. Ry. Co. v. Donellan*, [1898] 2 Q. B. 7; 67 L. J. Q. B. 681, was approved and followed.

In another case, under sect. 5 of the Rates and Charges Orders, 1891—2, the House of Lords held that if, before any difference had in fact arisen, an action was brought in any Court of law to recover money alleged to be due to a railway company under this section, the Court had, and an arbitrator had not, jurisdiction to determine the matter in dispute. *L. & N. W. and G. W. Joint Ry. Cos. v. Billington*, [1899] A. C. 79; 68 L. J. Q. B. 162.

The effect of the last mentioned decision would appear to be limited to cases in which a trader had agreed, or must be treated as having agreed, to pay the charges made by the railway company, and that if there was only a refusal to pay, the remedy of the company was to seek arbitration and not to sue the trader. See *L. & N. W. Ry. Co. v. Jones*, [1915] 2 K. B. 35; 84 L. J. K. B. 1368. In that case Rowlatt, J., at p. 40 of the L. R. Report, thought that the only case in which the Court could be appealed to before arbitration was where the trader had agreed to the demand and merely refused to pay; secondly, that wherever this could not be shown and he had not paid, the case must be treated as one in which a difference had arisen; and, thirdly, that the decision of the House of Lords in *Billington Case*, *supra*, was no authority to the contrary.

It was held by the House of Lords that a claim by a trader



**Ch. XIX.** under sect. 6 of the Rates and Charges Orders, 1891—2—replaced  
**Art. 188.** by sect. 3 (1) of this schedule—for damages caused by the undue detention of his own truck and the consequent cost of hiring another could be determined only by arbitration, and not by an action at law. *G. W. Ry. Co. v. Phillips*, [1908] A. C. 101; 77 L. J. K. B. 306.

It was not a condition precedent to the railway company lawfully making a charge that the reasonableness of such charge should have first been determined by an arbitrator. *Cowan v. N. B. Ry. Co.* (No. 3), 4 Fraser, 334; 11 Ry. & Ca. Tr. Ca. 271.

With regard to a notice given by a trader that he does not require a given service.

In a case where a railway company weighed coal for traders, the latter wrote to the company as follows: "Kindly note that these charges are not incurred at our request or for our convenience." The company nevertheless continued the service, and the traders continued to take advantage of it. The Railway Commissioners held that the above notice was inoperative. *Gt. S. & W. Ry. Co. v. Wallace Brothers*, 15 Ry. & Can. Ca. at p. 81.

"11.—(3) Subject to the provisions of this paragraph, any charge hereunder made by a company in accordance with an order of the Rates Tribunal in force for the time being may be recovered by action in a court of law."

"12. The standard rate for conveyance is the rate which the company may charge for the conveyance of merchandise by merchandise train and, subject to the exceptions and provisions specified in this Schedule, includes the provision of locomotive power and trucks by the company and every other expense incidental to such conveyance not otherwise herein provided for."

The meaning of "conveyance" is to be explained by reference to the history of railway development in this country, a full statement of which will be found in the judgment of Wills, J., in *Hall v. L. B. & S. C. Ry. Co.*, 15 Q. B. D. 505 at pp. 533 *et seq.*; 5 Ry. & Can. Ca. 28. Ch. XIX.  
Art. 100.

The original conception of a railway was that of a highway for the use of the public. The owning company were to be in the position of toll takers, and their railway was to be open to the engines and carriages of any person who paid the authorised tolls. In practice this was found to be unworkable.

The second stage of development was that in which the railway company provided the line, the engines, the trucks, and the staff for working the same, but in which the station accommodation for goods and the incidental terminal services, such as loading, covering, weighing, &c., were to a considerable extent provided and performed by independent firms or persons; these in most cases were the old carriers who had been in business before the coming of railways. Under this state of things the railway company were responsible only for moving or "conveying" the goods. The carrier acted in the case of goods delivered to him as an intermediary between the railway company and the public, and as regards the latter was responsible for the carriage of their goods from the point of delivery to the point of destination, and in this sense he was, from the customer's point of view, a carrier in the full sense of the word.

The third and final stage was that in which the railway companies both "conveyed" the goods and also provided terminal accommodation and services having direct dealings with the public, that is to say, they acted as "carriers."

A railway company might thus be (1) toll takers only; (2) conveyers but not carriers; (3) carriers in the full sense.

The charging powers authorised by the early railway Acts were based on these different conceptions. It was usual (1) to give the company power to take tolls for the use of the railway by outside vehicles and to make a separate charge for locomotive power and trucks if and when supplied; (2) to provide that if the

**Ch. XIX.** company acted as "conveyers," i.e., supplied track, engine and  
**Art. 189.** truck, the total charge should be less than the aggregate of the three separate charges for the same; (3) to authorise reasonable charges for services incidental to the business of a carrier.

The earlier Acts were replaced by the Rates and Charges Orders, 1891—2, but the rates and charges thereby authorised were still placed on the old basis, namely, a conveyance rate with a charge for station and service terminals. Charges for the various special services, specified in sect. 5 of the Orders, were also authorised.

The above distinctions are retained by the Railways Act, 1921, the Fourth Schedule of which requires that the standard charges shall be divided into those for conveyance, station terminals, and service terminals. Sect. 40 of the Act applies the same principle to exceptional rates. Special service charges are maintained by sect. 11 of this schedule as already described.

The expression "conveyance," when used in connection with railway rates, therefore refers to the work done by the railway company in the second stage of railway development as above described, namely, the provision of track, motive power, and wagon.

Except on the systems of the former North-Eastern and the former Scottish companies, the conveyance rate does not include the provision of wagons for traffic included in class A of the old classification, or after the appointed day for coal and traffic in the first four classes of the new classification.

It may be permitted to observe that while the independent carrier has thus been partly responsible for the shape taken by railway rates in this country, there may have been a tendency to magnify the extent of his operations in order to round off a neat explanation of the evolution of rates. In any case the railway companies soon began to compete with him in his own sphere, and early railway history is marked by constant litigation between the companies and the carriers in the efforts of the latter to maintain their position. It would appear from the judgment of Sir F. Peel in *Sowerby v. G. N. Ry. Co.*, 7 Ry. & Can. Ca.

at p. 165, that the independent carrier had disappeared by the year 1850. Ch. XIX.  
Art. 129.

Dealing with the cases on the subject:—

In *Hall v. L. B. & S. C. Ry. Co.*, 15 Q. B. D. 505; 5 Ry. & Can. Ca. 28, which was a case under the company's special Act of 1863, the maximum conveyance rate included all services "except a reasonable sum for loading, covering, and unloading . . . for collection and delivery and any other services incidental to the duty or business of a carrier." There was no specific mention of a charge for station accommodation. The company supplied station and siding accommodation, and rendered other services in the form of clerkage, weighing, checking, and labelling. Upon a case stated by the Railway Commissioners, a Divisional Court (Wills and Manisty, JJ.) held that the above accommodation and services were *prima facie* not part of conveyance, but were "services incidental to the duty and business of a carrier," for which an additional charge might be made, but that it was a question of fact for the Commissioners to decide whether they were so in any particular case.

In *Sowerby v. G. N. Ry. Co.*, 7 Ry. & Can. Ca. 156, which was another station traffic case, under a special Act of 1850, the Court of Appeal approved the above decision in *Hall's Case*, and decided that if an independent carrier would have done the work at the station in question, the railway company might charge for it as a service incidental to the business of a carrier.

In the recent case of *Foster Brothers v. G. E. Ry. Co.*, [1920] 2 K. B. 574; 89 L. J. K. B. 612; 16 Ry. & Can. Ca. 337, the Court of Appeal applied the above rule in *Sowerby's Case*, *supra*, to private siding traffic. The main services rendered at or in connection with a private siding are, however, usually extra haulage and shunting, and inasmuch as it may be doubted whether the independent carrier was in the practice of performing these services there may be considerable difficulty in giving effect to the above decision in *Foster's Case*.

The subject of conveyance is closely connected with that of private siding services, and reference should be made to

Ch. XIX. sect. 11 (1) (i) of this schedule and the notes thereunder, *ante*,  
Art. 183. p. 285.

“13. The standard station terminal is the charge which the company may make to a trader for the use of the accommodation (exclusive of coal drops) provided and for the duties undertaken by the company, for which no provision is made in this Schedule at the terminal station for or in dealing with merchandise as carriers thereof before or after conveyance.”

In *M. S. & L. Ry. Co. v. Pidcock*, 10 Ry. & Can. Ca. at p. 158, Sir F. Peel said: “A station terminal is for use of the accommodation or staff of a terminal station after conveyance is at an end, and understanding ‘conveyance’ in the sense to which it is restricted in *Hall's Case*, *ante*, goods arriving at a station to which they are consigned for delivery, and which upon arrival have to be hauled a greater or less distance to be in a position where they can be unloaded and delivery given, are liable to a terminal charge.”

The station terminal is mainly given by way of remuneration for the accommodation a station affords in receiving and unloading goods, but anything that remains to be done after loading and before departure in the nature of marshalling trucks and making them up into trains is one of the duties included in that terminal. There cannot be any fixed proportion of the amount charged for a station terminal which can be attributed to this latter service, but it is usually a small one. See Sir F. Peel's judgment in *Cowan v. N. B. Ry. Co.*, 10 Ry. & Can. Ca. at p. 175.

As to “Carriers,” see *ante*, p. 301.

“14. The standard service terminals are the charges which the company may make to a trader for the following services when rendered to or for a trader, that is to say, loading, unloading, covering, and un-

covering merchandise, which charges shall, in respect of each service, be deemed to include all charges for the provision by the company of labour, machinery, plant, stores and sheets." Ch. XIX.  
Art. 182.

The terms "loading" and "unloading" do not include more than the labour of packing and unpacking a goods train or truck, whether done by hand or machinery. *Berry v. L. C. & D. Ry. Co.*, 4 Ry. & Can. Ca. 310.

The Standard Company's Risk Conditions of Carriage (Condition 19) provides as follows:—

Where loading or covering is performed by the sender, the company shall not be liable for loss of or damage or delay to merchandise so loaded or covered upon proof by the company that such loss, damage or delay would not have arisen but for faulty and/or improper loading or covering on the part of the sender. For the purpose of this condition, merchandise shall not be deemed to be loaded or covered in a faulty and/or improper manner if loaded or covered in the manner directed by the company. See Appendix, p. 606, *post*.

"15. Where a consignment by merchandise train is over three hundredweight, a fraction of a quarter of a hundredweight may be charged for as a quarter of a hundredweight.

"16. For a fraction of a mile the company may charge according to the number of quarters of a mile in that fraction, and a fraction of a quarter of a mile may be charged for as a quarter of a mile.

"17. Articles sent in large aggregate quantities, although made up of separate parcels such as bags of sugar, coffee, and the like, shall not be deemed to be small parcels.

CH. XIX.  
Art. 189.

“18. For any quantity of merchandise less than a truck load which the company either receive or deliver in one truck on or at a siding not belonging to the company, or which from the circumstances in which the merchandise is tendered or the nature of the merchandise the company is obliged or required to carry in one truck, the company may charge as for a reasonable minimum load having regard to the nature of the merchandise.

“19. The term ‘terminal station’ means a station or place upon the railway at which a consignment of merchandise is loaded or unloaded before or after conveyance on the railway, but does not include any station or junction at which the merchandise in respect of which any terminal is charged has been exchanged with, handed over to, or received from any railway company, or a junction between the railway and a siding let by or not belonging to the company, or in respect of merchandise passing to or from such siding, any station with which such siding may be connected, or any dock or shipping place the charges for the use of which are regulated by Act of Parliament.

“The term ‘siding’ includes branch railways not belonging to a railway company.

“20. In this Schedule the word ‘company’ means a railway company with respect to which a schedule of standard charges is in operation, and the word ‘trader’ includes any person sending or receiving or desiring to send or receive merchandise by railway.”

The expression “trader” will include shipowners to whom goods are consigned for shipment and who receive the goods from the railway company. *N. B. Ry. Co. v. Clyde Shipping Co.*, 16 Ry. & Can. Ca. 251.

## CHAPTER XX.

## REMUNERATION FOR CARRIAGE OF POST OFFICE 'MAILS.

**184.** The Postmaster-General may, by notice in writing, require any railway company to convey mails by ordinary or special trains at such hour as he shall direct, and to provide, if necessary, separate carriages for sorting, and a railway company required by the Postmaster-General to so convey mails shall be entitled to such reasonable remuneration as shall be fixed and agreed upon between the Postmaster-General and such railway company, or, in case of difference between them, as shall be determined by arbitration. See the Conveyance of Mails Act, 1838.

Chap. XX.  
Art. 184.

The whole of a special train may be appropriated for the post office service. Regulation of Railways Act, 1868, s. 36.

A mail guard may travel as an ordinary passenger by any ordinary train with bags not exceeding the weight of luggage allowed to other passengers, and subject to the rules as to any excess of that weight. Railway Regulation Act, 1844, s. 11.

Every railway company shall convey by any train all mails tendered for conveyance, whether under the charge of a post office servant or not, and notwithstanding that no written notice has been given by the Postmaster-General.

Every railway company shall also afford all reasonable facilities for the receipt and delivery of mails



**Chap. XX.  
Art. 184.**

at any of their stations without requiring them to be booked, and shall permit a guard appointed by the Postmaster-General in charge of mails to receive and deliver them at any station. Regulation of Railways Act, 1873, s. 18.

Every railway company shall be entitled to reasonable remuneration for any services performed by them in pursuance of this Act (the Regulation of Railways Act, 1873) in respect of the conveyance of mails, and any difference as to the amount of the same and any other question arising under the Act shall be decided by arbitration, or at the option of the railway company, by the Railway Commissioners. See sect. 19 of the above Act.

Where a railway company use, maintain, or work, or are party to any arrangement for using, maintaining or working steam vessels, all provisions contained in any Act with respect to the conveyance of mails by railways shall, so far as applicable, extend to such steam vessels. Sect. 20 of the above Act.

Where, under any Act relating to the conveyance of mails, it is provided that any matter of difference relating to any remuneration to be paid by the Postmaster-General to any railway company shall be referred to arbitration, that matter of difference shall, at the instance of any party thereto, be referred to the Railway Commissioners instead of to arbitration. The Conveyance of Mails Act, 1893, s. 1.

By sects. 2 and 3 of this Act provision is made for the conveyance of mails on tramways and tram-roads

In *Postmaster-General v. Highland Ry. Co.*, 2 Ry. & Can. Ca. 34, the Railway Commissioners held that the words "any

other question" in sect. 19 of the above Act of 1873 was confined Chap.  
Art. 124.  
by the preceding particular words to questions of account, compensation and remuneration.

Upon an application to determine the amount of remuneration to be paid per annum by the Postmaster-General to the W. Railway Company for the conveyance of mails on their railway—

- (1) By certain special or notice trains required to be run by notice from the Postmaster-General;
- (2) By certain ordinary or agreed trains timed by agreement with the Postmaster-General;

The Railway Commissioners held, that the remuneration for carrying the mails ought not to include any sum directly representing the capital cost of providing the railway; and, further, that the definite sum to be paid should be of sufficient amount—

- (1) To give the railway company payment for the mails at their ordinary parcels rate, less a rebate of one-third of it, in consideration of the usual terminal services in connection with parcels being done in the case of the mail parcels by the Postmaster-General.
- (2) To make up to them, when required, the gross receipts of the notice train to 5s. per train mile.
- (3) To compensate them for a possible decrease of the receipts of agreed trains due to their times of running being partly fixed to meet postal requirements, the allowance under this head to be a substantial one, equal to a guarantee of 3s. 6d. gross receipts per train mile—the cost of working either class of train being taken by agreement at 2s. 7d. per train mile.

It was also held that these conditions would be provided for by fixing the amount to be paid per annum at 8,000*l.* *Waterford, Limerick & Western Ry. Co. v. Postmaster-General*, 11 Ry. & Can. Ca. 77.

In the case of *Great Western Ry. Co. v. Postmaster-General*, 12 Ry. & Can. Ca. 11, the railway company made an application under the Conveyance of Mails Act, 1893, to determine the

**Chap. XX.** amount of remuneration to be paid per annum by the Postmaster-  
 **Art. 104.** General to them for the conveyance of mails on their railway,  
 and for the services performed and accommodation provided by  
 them in connection therewith.

The Railway Commissioners held that to arrive at a "reasonable remuneration" to be paid to the railway company for the conveyance of mail bags, the railway company's ordinary scale of rates for parcels should be applied, less certain deductions to countervail expenses incurred by the railway company in carrying parcels for the public, and not incurred in case of the mails, viz., 25 per cent. for terminal services and 10 per cent. on account of the substantial difference between mail bags and parcels in the quantity of the bags, and the regularity with which they were supplied for conveyance. The railway company also claimed to be paid full passenger fares for servants of the Post Office travelling in the sorting carriages, and it was held that the railway company should be paid for the conveyance of sorters and other servants of the Post Office at season-ticket rates.

In dealing with a further claim of the railway company to charge for "rent" for sites of letter boxes at stations, and for conveyance of mails by omnibus, the Commissioner held that such matters were outside the question of conveyance of mails by train; but charges were authorized for the use of the company's premises by the Post Office staff, and for assistance in transferring mails rendered by the servants of the railway company.

In *G. N. Ry. Co. (Ireland) v. Postmaster-General*, 13 Ry. & Can. Ca. 290, the Railway Commissioners decided:-

1. That where the charges for the carriage of mails were based on the analogy of the charges for the carriage of parcels by passenger train, the charges for mails should be made on the ordinary lower scale charged to the public, and not the higher or clearing house scale.

2. That a deduction of 25 per cent. should be made in respect of terminal services not performed in the case of mails, and a further deduction of 10 per cent. be made in view of the quantity

and regularity of the mails, and the greater facility and economy with which they were handled. Chap. XX.  
Art. 134.

3. That the railway company were entitled to charge a full local rate in respect of through mails to and from other railways.

4. That with regard to "notice trains," *i.e.*, trains run compulsorily and under the control of the Postmaster-General, the proper principle to adopt was to ascertain the cost of running each train plus such further amounts as might represent a fair profit and compensate the company for the restriction on their freedom in working their system, but that against the sum so ascertained the Postmaster-General might set off the annual earnings of each train.

The carriage of Post Office parcels by railway is regulated by the Post Office (Parcels) Act, 1882, as amended by sect. 3 of the Post Office and Telegraph Act, 1920.

Under the system thereby established, the amount payable to the railway companies is fixed at eleven-twentieth parts of the gross receipts from all parcels conveyed by railway. This amount is paid in a lump sum to the railway clearing house, which apportioned it among the several companies in fixed proportions. The Act of 1882 requires any railway company named in Schedule I. of the Act to accept and deliver receptacles containing post office parcels at any station. See also *Reg. v. L. & N. W. and G. W. Ry. Cos.*, 65 L. J. Q. B. 516.

## PART IV.

## RAILWAY FACILITIES AND UNDUE PREFERENCE.

## CHAPTER XXI.

## REASONABLE FACILITIES.

Ch. XXI.  
Art. 185.

**185.** Sect. 2 of the Railway and Canal Traffic Act, 1854, enacts as follows:—

“Every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic (which, by the interpretation section, includes passengers and their luggage, goods and animals) upon and from the several railways (which, by the interpretation section includes all public stations) and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles, . . . ; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near (*i.e.*, by the interpretation section, within one mile, except in London) the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for

receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf."

Can.  
Art. 101.

From 1854 to 1873, the remedy given by the Railway and Canal Traffic Act, 1854, was by a summary application to the Court of Common Pleas in England, to the Court of Session in Scotland, and to one of the superior Courts in Ireland.

The Regulation of Railways Act, 1873, s. 4, established a new body consisting of three Commissioners to carry into effect the provisions of the Railway and Canal Traffic Act, 1854, and the additional powers given by the Act of 1873.

The Railway and Canal Traffic Act, 1888, ss. 2, 3 and 4, established a new Court styled the Railway and Canal Commission, consisting of two appointed and three *ex officio* Commissioners. The two appointed Commissioners were to be appointed by the President of the Board of Trade, but their appointment is now vested in the Home Secretary under an Order in Council made in pursuance of sect. 2 (1) (iii) of the Ministry of Transport Act, 1919. Of the three *ex officio* Commissioners, the Commissioner for England was and is to be a judge of the High Court in England, the Commissioner for Scotland a judge of the Court of Session, and the Commissioner for Ireland was to be a judge of the High Court in Ireland.

The Court, nevertheless, is one Court. See *N. B. Ry. Co. v. Lord Advocate*, 17 Ry. & Can. Ca. at p. 51; and a decision of the Court when sitting in one country is binding upon it

Ch. XXI. when sitting in another country. See *Cowdenbeath Coal Co.*  
Art. 185. *v. N. B. & Cal. Ry. Cos.*, 8 Ry. & Can. Ca. at p. 255; *Spillers*  
*and Bakers, Ltd. v. G. W. Ry. Co.*, 14 Ry. & Can. Ca. at  
 p. 57.

The existence of the Railway Commission appears to have been overlooked in the recent constitutional changes in Ireland. The Court presumably has no jurisdiction in the Irish Free State, now a self-governing dominion, under the Irish Free State Constitution Act, 1922. On the other hand, there appears to be nothing on the face of the Government of Ireland Act, 1920, which would interfere with the jurisdiction of the Court in Northern Ireland, and sect. 61 of that Act provides that all existing laws, institutions, and authorities, whether judicial, administrative, or ministerial, shall continue as if the Act had not passed subject to the modifications necessary for adapting them to the Act.

Sect. 27 of the Railways Act, 1921, has transferred to the Railway Rates Tribunal as from "the appointed day" the sole jurisdiction in respect of the various matters over which the Tribunal is given jurisdiction. For a list of these matters see *ante*, p. 208. In the meantime existing rates are stabilised by sect. 60 of the Act, while sect. 61 (2) of the Act deprives the Commission of its jurisdiction with regard to private siding charges.

It would appear that the jurisdiction of the Railway Commission as regards railways now includes:—

- (a) Complaints of undue preference. See *post*, p. 373.
- (b) Provision of reasonable facilities in respect of accommodation and services, but not in respect of through rates. See sects. 16 and 47 of Railways Act, 1921, *post*, pp. 317 and 347. See also sect. 9 of the Railway and Canal Traffic Act, 1888, *post*, p. 323.
- (c) Questions (a) as to the legality of a rate (see sect. 10 of Railway and Canal Traffic Act, 1888), and consequently (b) as to the identity of a given article which is the subject of a charge. See *Thos. Ward, Ltd. v. Mid. Ry. Co.*, [1917] 2 K. B. 278; 16 Ry. & Can. Ca. 178.

- (d) Power to act as arbitrators in disputes between railway or canal companies. See sect. 8 of the Regulation of CH. XXI.  
Railways Act, 1873, sect. 15 of the Railway and Canal Art. 124.  
Traffic Act, 1888, and *G. W. Ry. Co. v. Barry Ry. Co.*, 13 Ry. & Can. Ca. 362.

The effect of sect. 9 of the Regulation of Railways Act, 1873, when read along with sect. 6 of the Railway and Canal Traffic Act, 1854, is not to give an exclusive jurisdiction to the Railway Commissioners in matters coming within the ordinary jurisdiction of a Court of law, except in cases included within the enactments of the Act of 1854, nor will a provision in the special act of a railway company authorising the making of an application to the Commissioners have the effect of giving them an exclusive jurisdiction in the absence of words expressly or impliedly excluding the jurisdiction of a Court of law. *Barry Ry. Co. v. Taff Vale Ry. Co.*, [1895] 1 Ch. 128; 64 L. J. Ch. 230.

Sect. 6 of the Traffic Act, 1854, is as follows:—

“No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided; but nothing herein contained shall take away or diminish any rights, remedies or privileges of any person or company against any railway or canal or railway and canal company under the existing law.”

The Minister of Transport (formerly the Board of Trade) may appoint the Commissioners to act as arbitrators in any difference to which a railway or canal company is a party. See sect. 6 of the Board of Trade Arbitrations Act, 1874.

- (e) Determination of any difference to which a railway company is a party on the application of the parties. See sect. 9 of the Regulation of Railways Act, 1873.
- (f) Questions as to payment for conveyance of mails. See Conveyance of Mails Act, 1893, s. 1, *ante*, p. 308.
- (g) Inquiries as to workmen's trains under sect. 3 of the Cheap Trains Act, 1883. See *post*, p. 475.



**Ch. XXI.** Sect. 19 of the Railway and Canal Traffic Act, 1888, gave the  
**Art. 135.** Commissioners power to award costs at their discretion.

This power has been restricted by sect. 2 of the Railway and Canal Traffic Act, 1894, which provided that, except in disputes between two or more companies, the Commissioners shall not have power to award costs unless they are of opinion that the claim or defence has been frivolous and vexatious.

The last mentioned section applies to the Commissioners when sitting as arbitrators as well as when sitting as a Court. See *Cheshire Lines Committee v. John Butler & Co.*, 16 Ry. & Can. Ca. at p. 221. The word "companies" in the same section appears to have been read as meaning railway or canal companies only. *Ibid.*

The Commissioners have power to award costs in interlocutory proceedings. See *Rickett, Smith v. Mid. Ry. Co.*, 9 Ry. & Can. Ca. at p. 138. So also has the Registrar of the Commission. See *Smith, Stone and Knight v. L. & N. W. Ry. Co.*, 15 Ry. & Can. Ca. at p. 325.

An appeal lies on a question of law from the Commissioners to the Court of Appeal of the country in which the decision was given in accordance with sect. 17 of the Railway and Canal Traffic Act, 1888. This section is set out at length on p. 220, *ante*.

While there is no appeal on a question of fact, yet if in solving a question of fact the Commissioners have applied a wrong principle of law, their decision may be reversed. See *N. E. Ry. Co. v. N. B. Ry. Co.*, 10 Ry. & Can. Ca. at p. 82; *Pickford's, Ltd. v. L. & N. W. Ry. Co.*, 13 Ry. & Can. Ca. at p. 70. An appeal will lie from the Commissioners on the ground that there was no evidence to support their decision. *Lever Brothers v. Mid. Ry. Co.*, 13 Ry. & Can. Ca. at p. 309.

Where the Commissioners were in pursuance of an agreement between the parties and an Act of Parliament appointed to determine certain differences, the House of Lords held that they were sitting as a Court and not as arbitrators, and that an appeal lay from them under sect. 17 of the Railway and Canal Traffic Act,

1888. *National Telephone Co. v. Postmaster-General*, [1913] A. C. 546; 15 Ry. & Can. Ca. 109. Ch. XXI.  
Art. 108.

No further appeal lies from the decision of any of the respective Courts of Appeal, except where divergent judgments on the same point have been given by two of those Courts. In that case leave may be given by a Court of Appeal to appeal to the House of Lords in a case raising the same point. See sect. 17 (5) of Railway and Canal Traffic Act, 1888.

186. Where a railroad is taken over by the Government under sect. 16 of the Regulation of the Forces Act, 1871, the Government may delegate to the company owning such railroad the right to exercise control over its working, and in that case the company *prima facie* should afford reasonable facilities for public traffic, and it rests with the company to show that it is no longer within their power to afford such facilities. *Denaby and Cadeby Collieries, Ltd. v. G. C. Ry. Co.*, 84 L. J. K. B. 2201; 16 Ry. & Can. Ca. 1.

187. Sect. 16 (1) of the Railways Act, 1921, enacts:—

“With a view to securing and promoting the public safety, or the interests of the public, or of trade, or of any particular locality, the Railway and Canal Commission may, on the application of any body of persons representing any such interests, by order require any railway company or companies, or the Minister may, on the application of any such company or companies, by order authorise the company or companies, to afford such reasonable railway services, facilities, and conveniences upon and in connection with its undertaking or their undertakings (including the provision of such

**Ch. XXI.**  
**Art. 167.**

minor alterations and extensions and improvements of existing works as will not involve in any one case an expenditure exceeding one hundred thousand pounds) as may be specified in the order:—

“Provided that, if on any such application a company satisfies the Railway and Canal Commission that under all the circumstances the capital required for the purpose cannot be provided or expended as proposed without prejudicially affecting the interests of the then existing stockholders, the order shall not be made:

“Provided further that the powers under this subsection shall be in addition to and not in derogation of any other existing powers of requiring measures for securing the safety of the public or the provision of reasonable facilities.”

Sect. 17 of the same Act enacts:—

“For enabling railway companies to effect alterations, extensions, and improvements of existing works in pursuance of an order of the Railway and Canal Commission or the Minister under this Part of this Act, the Minister may make any such order authorising the acquisition of land or easements and the construction of works as could have been made under paragraph (d) of subsection (1) of section three of the Ministry of Transport Act, 1919, for the purposes specified in that paragraph, and that paragraph and section twenty-nine of the same Act, other than the proviso to subsection (3) of that section and the rules made under that section, and the regulations contained in the Second Schedule to the same Act shall, so far as they relate to railways, apply accordingly.”

The effect of sects. 16 (1) and 17 of the Railways Act, 1921,

is to alter the law as established by the Court of Appeal in *S. E. Ry. Co. v. Railway Commissioners and Corporation of Hastings*, 6 Q. B. D. 586; 50 L. J. Q. B. 201; 3 Ry. & Can. Ca. 464, which decided that the Railway Commissioners under the then law had no jurisdiction to order a railway company to make a new station, or to carry out specific works, or to provide facilities which were outside their statutory powers. The Commissioners now may require the company to effect specific improvements of existing works not exceeding in any one case a cost of 100,000*l.*, and sect. 17 of the Railways Act authorises the Minister of Transport to make an order empowering the company to acquire the land and to construct the works necessary for the purpose of giving effect to the order of the Commissioners.

It is to be observed that this new power of the Commissioners to specify definite works in their order apparently only applies to existing works, and therefore it would seem that they have no power to order the construction of wholly new works, *e.g.*, a new station at a point where there is no existing station.

Reasonable facilities and reasonable services are questions of fact. In the first case dealt with by the Commissioners under sect. 16 (1) of the Act of 1921, an application that a former side entrance to a station should be re-opened was dismissed on the ground that it was not required in the interest of the general travelling public, and that conditions at the station had changed. See *Corporation of Nottingham v. Mid. Ry. Co.*, 17 Ry. & Can. Ca. 72.

It is uncertain how far sect. 16 (1) of the Act of 1921 has altered the law as established by the Court of Appeal in *Darlaston Local Board v. L. & N. W. Ry. Co.*, [1894] 2 Q. B. 694; 63 L. J. Q. B. 826; 8 Ry. & Can. Ca. 216, in so far as it decided the Commissioners had no power to order the provision of facilities on a line closed for traffic. It remains to be decided whether the Commissioners have power under the above section to order a railway to resume the working of, or to reinstate a

CH. XXI. disused line, or to rebuild a station and give facilities for  
Art. 187. passenger traffic on a line used only for goods traffic.

In the *Darlaston Case* the company owned a loop line which left their railway at W. and rejoined it at J. B. Up to October, 1887, there was a passenger station at D. on this line, and passenger trains ran over it, stopping at this station. The company then ceased to run passenger trains over the loop line and pulled down the passenger station at D., alleging, as was the fact, that they were running such trains at a loss owing to the small number of passengers carried. The Commissioners ordered the company to afford all reasonable facilities for passenger traffic upon and from the said railway, but did not directly order the re-erection and opening of the passenger station at D., although it was agreed that it would be necessary for the company to do so in order to comply with the order. The company appealed, and the Court of Appeal reversed the decision of the Commissioners on the ground, *inter alia*, that it had been held, in the case of *R. v. York and North Midland Ry. Co.*, 1 E. & B. 178 and 858, that a railway company whose special Act of Parliament contained the usual permissive words to construct a line were not under any obligation to do so, and also in *R. v. G. W. Ry. Co.*, 62 L. J. Q. B. 572, that a railway company under like circumstances could not be compelled by mandamus to reinstate a part of their line which had been let down and destroyed, and therefore in the case before them, where the company's special Act contained only an enabling and permissive power to construct and work the line in question, the company were under no obligation to maintain or to keep open such line for traffic or any particular kind of traffic.

In *Glamorganshire County Council v. G. W. Ry. Co.*, [1895] 1 Q. B. 21; 64 L. J. Q. B. 138; 8 Ry. & Can. Ca. 196, the company were in possession, as lessees, of certain lines of railway which had been constructed under various Acts of Parliament which contemplated but did not require that such lines should be used for passenger traffic. The lines were in fact used only

for goods and mineral traffic. The county council applied for an order requiring the company to afford all reasonable and proper facilities for passenger traffic upon these lines, including proper and sufficient station accommodation at certain specified places. In order to comply with any general order requiring the provision of facilities for passenger traffic it would have been necessary to construct at least one new station to carry out extensive alterations at two existing goods stations, and to double part of an existing single line in the absence of an undertaking by the company as to working that line which the company were not prepared to give. The Commissioners dismissed the application on the ground that they had no jurisdiction to order indirectly what they could not order directly, and that the structural alterations involved as a necessary incident of opening the lines for passenger traffic were so large as to come within the prohibition of the decision in the *Hastings Case*, ante, p. 319.

The following cases as to the provision of station accommodation may be referred to:—

The case of *Caterham Ry. Co. v. L. B. & S. C. Ry. Co. and S. E. Ry. Co.*, 1 C. B. (N. S.) 410; 26 L. J. C. P. 161; 1 Ry. & Can. Ca. 32, was the only one in which defective station arrangements were brought before the Court of Common Pleas under the Railway and Canal Traffic Act, 1854, and the Court, apparently, were of opinion that interference with station arrangements was within their power.

Where the works necessary for the provision of additional accommodation cannot be carried out except with the consent of some public authority or other person, the failure to construct the same was not a violation of the provisions as to reasonable facilities of sect. 2 of the Act of 1854. *Corporation of Arbroath v. Caledonian and N. B. Ry. Cos.*, 10 Ry. & Can. Ca. 252.

A railway company are not bound to provide a perfect station, and nothing less than reasonable proof that they have not carried out their obligation will authorise the Commissioners to interfere

Ch. XXI. with their discretion. *Leek U. D. C. v. N. Staff. Ry. Co.*, 15  
Art. 187. Ry. & Can. Ca. 105.

Nor will their discretion be interfered with unless it can be shown that the desired accommodation is in the general public interest. *Corporation of Nottingham v. Mid. Ry. Co.*, 17 Ry. & Can. Ca. 72.

In *Thomas v. N. Staff. Ry. Co.*, 3 Ry. & Can. Ca. 1, a railway company delivered minerals at T. station, but refused to deliver there damageable traffic consigned to the applicant, and delivered such traffic at L., one mile and a half from T., which was their general goods station for T. The accommodation at T. station being insufficient to receive all the T. goods traffic, and the railway company having no power to enlarge it, it was held that the applicant was not entitled to have damageable goods delivered at that station.

A railway company are not bound to provide booking offices for traffic at places off their railway, nor to arrange for the conveyance by road of goods between such places to the nearest station on their railway. *Dublin & Meath Ry. Co. v. Midland Gt. Western of Ireland Ry. Co.*, 3 Ry. & Can. Ca. 379.

It would appear from *Singer, &c. Co. v. L. & S. W. Ry. Co.*, [1894] 1 Q. B. 833; 63 L. J. Q. B. 411, that a cloak room is a reasonable facility within sect. 2 of the Railway and Canal Traffic Act, 1854.

The fact that a railway company makes a charge for the use of water-closets at their stations is not, in the absence of undue preference, a breach of their obligation to afford reasonable facilities. *West Ham Corporation v. G. E. Ry. Co.*, 64 L. J. Q. B. 340; 9 Ry. & Can. Ca. 7.

The Railway Commissioners will not compel a canal company whose statutory powers are permissive only and not obligatory to restore and maintain part of their canal where the traffic would be insufficient to compensate them for the outlay, and the cost would exceed any advantage which could accrue either to landowners

and traders or to the company themselves. *Rothschild and others* Ch. XXL  
*v. Grand Junction Canal Co.*, 12 Ry. & Can. Ca. 141. Art. 187.

188. Sect. 9 of the Railway and Canal Traffic Act, 1888, enacts:—

“Where any enactment in a special Act— (a) contains provisions relating to traffic facilities, undue preference, or other matters mentioned in sect. 2 of the Railway and Canal Traffic Act, 1854; or (b) requires a railway company to provide any station, road, or other similar work for public accommodation; or (c) otherwise imposes on a railway company any obligation in favour of the public or any individual, or where any Act contains provisions relating to private branch railways or private sidings, the Railway Commissioners have the like jurisdiction to hear and determine a complaint of a contravention of the enactment as the Commissioners have to hear and determine a complaint of a contravention of sect. 2 of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts.”

Sect. 2 of the Railway and Canal Traffic Act, 1854, requires facilities to be given according to the powers of railway companies, and as special railway Acts make the powers of some companies larger than those of others, so they also extend or limit the facilities they give to the public, and thus the general enactment as to affording facilities has to be read and considered with reference to the language of any special Acts regarding them. *Tharsis Sulphur and Copper Co. v. L. & N. W. Ry. Co.*, 3 Ry. & Can. Ca. 455.

The jurisdiction to determine whether a member of the public has a statutory right to demand from a railway company a facility



Ch. XXI. or privilege belongs exclusively to the Railway Commissioners.  
Art. 188. *Perth General Station Committee v. Ross*, [1897] A. C. 479;  
 66 L. J. P. C. 81.

It would appear that the Railways Act, 1921, has not affected the jurisdiction of the Railway Commission on this subject except as follows:—

(1) Sect. 75 (2) of that Act provides that all facilities and arrangements as to traffic exchange and routes which existed on 1st August, 1914, between any of the companies amalgamated under that Act shall remain in force for five years, and may then only be terminated (except by agreement) by leave of the Rates Tribunal. In the meantime, *i.e.*, before the expiration of this period of five years, differences as to the subjects dealt with by the above sub-section apparently will be determined by the Railway Commissioners. See *G. C. Ry. Co. v. L. & N. W. Ry. Co.*, 17 Ry. & Can. Ca. 89.

(2) Sect. 10 of the Fifth Schedule to the Railways Act, 1921, requires a railway company to afford reasonable facilities for the expeditious conveyance of perishables by passenger train or other similar service, and provides that any question as to these facilities shall be determined by the Rates Tribunal.

(3) The jurisdiction as to through rates and fares is vested, after "the appointed day," in the Rates Tribunal by sect. 47 of the Railways Act, 1921.

The Commissioners doubted whether, if a railway company are bound by their special Act to weigh coal at the point of discharge, such weighing is a facility for delivery under the Railway and Canal Traffic Act, 1854, s. 2. *Watkinson and others v. Wrexham, Mold, &c. Ry. Co.* (No. 3), 3 Ry. & Can. Ca. 446.

As to compelling a company to work signals at a junction, as provided by their special Act, see *G. W. Ry. Co. and Midland Ry. Co. v. Bristol Port Ry. & Pier Co.*, 5 Ry. & Can. Ca. 94.

As to the obligation on a railway company to afford facilities, having regard to what may be within their powers, and, at the

same time, reasonable requirements, see *Thomas v. N. Staff. Ry. Co.*, 3 Ry. & Can. Ca. 1. Ch. XXI.  
Art. 188.

As to how far the provisions in a lease of a railway extend to works necessary to afford due facilities for traffic under sect. 2 of the Railway and Canal Traffic Act, 1854, see *L. & S. W. Ry. Co. v. Staines Ry. Co.*, 3 Ry. & Can. Ca. 48.

As to the provisions in a railway company's special Act of Parliament and in an agreement relating to the stoppage of all trains at a station, see *Gilmour v. N. B. Ry. Co.*, [1893] A. C. 281; 20 Sess. Ca. (4th Ser.) (H. L.) 53; 21 Sess. Ca. 765.

The word "individual" in sub-sect. (c) of sect. 9 of the Act of 1888 includes a company, or corporation, or any legal person who is not the general public. *Per Wright, J.*, in *G. N. Ry. Co. v. G. C. Ry. Co.*, 10 Ry. & Can. Ca. at p. 275.

**189.** In deciding what are "reasonable facilities" regard must be had to what is reasonable for the railway company as well as for the public. See judgment of Kay, L. J., in *Darlaston Local Board v. L. & N. W. Ry. Co.*, [1894] 2 Q. B. at p. 703; 63 L. J. Q. B. 826; 8 Ry. & Can. Ca. 216; *Spillers and Bakers, Ltd. v. G. W. Ry. Co.*, 14 Ry. & Can. Ca. at p. 83; *John Watson, Ltd. v. Cal. Ry. Co.*, 14 Ry. & Can. Ca. at p. 212.

In dealing with an application for reasonable facilities, the Railway Commissioners will only consider the facts of a concrete case, and will not make a declaration of an abstract right. *John Watson, Ltd. v. Cal. Ry. Co.*, 14 Ry. & Can. Ca. 185.

**190.** To induce the interference of the Railway Commissioners on a question of "reasonable facilities," apart from undue preference, it is generally necessary to prove a public inconvenience, and not merely an

Ch. XXI.  
Art. 100.

individual grievance. The existing accommodation provided, the convenience and interests of the general traffic of the railway company, and the power of the railway company to grant the proposed facilities are in addition all to be taken in consideration. *Barret v. G. N. Ry. Co. and Midland Ry. Co.*, 1 Ry. & Can. Ca. 38; 26 L. J. C. P. 83; 1 C. B. N. S. 423; *Beadell v. E. C. Ry. Co.*, 1 Ry. & Can. Ca. 56; 26 L. J. C. P. 250; *Painter v. L. B. & S. C. Ry. Co.*, 1 Ry. & Can. Ca. 58; 2 C. B. N. S. 702; *Ilfracombe Public Conveyance Co. v. L. & S. W. Ry. Co.*, 1 Ry. & Can. Ca. 61; *Corporation of Nottingham v. Mid. Ry. Co.*, 17 Ry. & Can. Ca. 72.

These cases show that public convenience is the standard by which the absolute accommodation to be granted by railway companies to the public should be determined, when the question is unincumbered by any considerations of undue preference.

Barret's application was refused, as being that of a person seeking to have a complicated traffic arrangement re-arranged for his own peculiar benefit. In that case Williams, J., said: "If the complainant had satisfied me that public convenience required what he asks, and the accommodation could reasonably be granted, I should have paused considerably before assenting to the rule being discharged." Cresswell, J., said: "In considering what was a reasonable amount of accommodation, regard must be had to the convenience of the general traffic of the company."

In *Beadell's Case* and *Painter's*, and that of the *Ilfracombe Conveyance Co.*, the complainants were unsuccessful, because the Court was not satisfied that there was a substantial inconvenience to the public from the cab arrangements made for them by the company.

In *Corporation of Nottingham v. Mid. Ry. Co.*, *supra*, which was an application that a side-entrance to a station should be re-

opened, it was shown that only 16 per cent. of the passengers using the station—who were mainly season and weekly ticket holders—would be likely to use such entrance, and the Commissioners refused to make any order.

Ch. XXI.  
Art. 186.

191. There must be a material change in circumstances in order to justify the Railway Commissioners to sanction the withdrawal of facilities which have been enjoyed for a long period (*e.g.*, over ten years) without any offer of other facilities being made in their place. *Dublin Steam Packet Co. v. Mid. G. W. Ry. Co.*, 8 Ry. & Can. Ca. 1.

But where it is sought to restore a facility which has been discontinued and where conditions have since changed, the fact that the desired facility formerly existed will not affect the question which will be decided on its merits. *Corporation of Nottingham v. Mid. Ry. Co.*, 17 Ry. & Can. Ca. 72.

Where an interlocutory application is made for the restoration of a facility which has been discontinued, regard should be had to the balance of convenience, and the application will not necessarily be granted pending the final decision. *Gt. C. Ry. Co. v. L. & N. W. Ry. Co.*, 17 Ry. & Can. Ca. 89.

192. Sect. 11 of the Railway and Canal Traffic Act, 1888, enacts:—

“Nothing in any agreement which has not been confirmed by Act, or by the Board of Trade, or by the Railway Commissioners. shall render a railway company unable to afford, or shall authorize such company to refuse, such reasonable facilities for traffic as may, in the opinion of the Commissioners, be re-

Ch. XXI.  
Art. 188.

quired in the interests of the public, or shall prevent the Commissioners from making or enforcing any order with respect to such facilities."

A railway company (subsequently amalgamated with the defendant company) had agreed with one P. for the purchase of certain land required for a station, subject to the condition that the company should not allow any coal or coke to be dealt with at the intended station unless it had been raised from or manufactured at P.'s collieries or coke ovens. And in accordance with this contract the company had refused to carry any other coal or coke from the said station. Upon a complaint by the local board for the district that the company did not afford at this station reasonable facilities for dealing with coal and coke traffic, the Railway Commissioners held, both on the general law and the company's special Acts, that the said contract was a breach of sect. 2 of the Railway and Canal Traffic Act, 1854, and ordered that the company should give the sought for facilities. *Rishton Local Board v. L. & Y. Ry. Co.*, 8 Ry. & Can. Ca. 74.

**193.** The fact that railway companies make charges for the conveyance of passengers or goods in excess of those authorized by their special Acts, but without any undue preference, is not a breach of their obligation under sect. 2 of the Railway and Canal Traffic Act, 1854, to "afford according to their respective powers all reasonable facilities for the receiving and forwarding and delivering of traffic." *G. W. Ry. Co. v. The Railway Commissioners and Brown*, 7 Q. B. D. 182; 50 L. J. Q. B. 483; 3 Ry. & Can. Ca. 523.

If the overcharges are of such an amount and of such a nature that they prevent or are intended to prevent the use of particular trains and stations, the Commissioners may have jurisdiction to entertain a

complaint in respect of them as being a refusal of facilities. *Ibid.*; *Young v. Gwendraeth Valleys Ry. Co.*, 4 Ry. & Can. Ca. 247. Ch. XXI.  
Art. 108.

*Brown's Case* was a complaint that a railway company did not afford "all reasonable facilities" within the meaning of sect. 2 of the Railway and Canal Traffic Act, 1854, because they charged passenger fares in excess of the sums they were entitled to demand under their special Act. It was held by the Court of Appeal that the fact that a railway company charged beyond the maximum sums contained in their special Act did not amount to a refusal to afford "reasonable facilities."

See also *Distington Iron Co. v. L. & N. W. Ry. Co.*, 6 Ry. & Can. Ca. 108.

#### PRIVATE SIDING CONNECTIONS.

194. Sect. 76 of the Railways Clauses Act, 1845, enacts:—

"A railway company shall, if required, at the expense of adjoining owners and occupiers and other persons . . . make openings in the rails, and such additional lines of rails as may be necessary for effecting a communication between private branch railways and their railway in places where the communication can be made with safety to the public, and without injury to the railway and without inconvenience to the traffic thereon . . . but this enactment shall be subject to the following restrictions and conditions (that is to say) . . . The company shall not be bound to make any such openings in any place which they shall have set apart for any specific purpose with which such communication would interfere,

Ch. XXI.  
Art. 184.

nor upon any inclined plane or bridge, nor in any tunnel."

Sect. 2 of the Railways (Private Sidings) Act, 1904, enacts:—

"The reasonable facilities which every railway company is required to afford under sect. 2 of the Railway and Canal Traffic Act, 1854, as amended or explained by any other Act, shall include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by any such company, and reasonable facilities for receiving, forwarding, and delivering traffic upon and from those sidings or private branch railways."

Under sect. 3 of the same Act "the Railway and Canal Commissioners may, at any time, review and rescind or vary any order made by them under this Act on the application of any party to the order, but, before such an application is entertained by the Commissioners, the applicant shall show to the Commissioners, in manner provided by rules to be made for the purpose under sect. 20 of the Railway and Canal Traffic Act, 1888, that there is a *prima facie* case for the application."

Sect. 9 of the Railway and Canal Traffic Act, 1888, enacts:—

"Where any Act contains provisions relating to private branch railways or private sidings, the Commissioners shall have the like jurisdiction to hear and determine a complaint of a contravention of the enactment as the Commissioners have to hear

and determine a complaint of a contravention of sect. 2 of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts." Ch. XXI.  
Art. 184.  
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The Private Sidings Act, 1904, altered the law as laid down in *Cowan v. N. B. Ry. Co.* (No. 2), 3 F. 677; 11 Ry. & Can. Ca. 96, in which the Court of Session held that the receiving and delivering of traffic by a railway company at a private siding were not reasonable facilities within sect. 2 of the Traffic Act, 1854, and that the Railway Commissioners had no jurisdiction to order a railway company to receive or deliver traffic at a private siding, even though the company in the past had voluntarily done so.

The question as to whether a connection between a railway company's line and a private siding could be ordered as a reasonable facility within sect. 2 of the Traffic Act, 1854, and also, it would appear, the further question as to whether a railway company could under the same section be ordered to make as a reasonable facility a branch line for the use of a particular individual or set of individuals, had been discussed in *Berston Brewery Co. v. Mid. Ry. Co.* (No. 1), 5 Ry. & Can. Ca. 53, so far back as 1885, but no definite decision was arrived at in that case or in the later cases of *Girardot v. Mid. Ry. Co.* (No. 2), and *Beeston Brewery Co. v. Mid. Ry. Co.* (No. 2), 5 Ry. & Can. Ca. 60.

Sect. 2 of the Railways (Private Sidings) Act, 1904, definitely settled in the affirmative the question as to whether a junction with a private siding can be claimed as a reasonable facility within sect. 2 of the Traffic Act, 1854.

In the Scottish case of *Kennedy v. G. & S. W. Ry. Co.*, 8 Fraser, 13, the railway company had contracted "to maintain and uphold in full efficiency" a certain siding. The Inner House of the Court of Session held that under this agreement the company were only bound to maintain the structural efficiency of the siding and its appurtenances, and not to provide facilities for its



GA. XXI.  
Art. 184.

use, e.g., the provision of servants, wagons, and appliances, nor were they bound, so far as the agreement was concerned, to receive goods delivered to them at such siding.

Certain sidings had communicated with sidings on the respondents' railway for many years under a terminable agreement, which the railway company terminated, and the owner now applied under sect. 76 of the Railways Clauses Act, 1845, for an order enjoining the railway company to make, or permit to be made, such lines of rails as might be necessary for effecting a communication between his sidings and those of the company. The railway company refused to make such communications on the ground that their sidings were now set apart for a specific purpose, with which such communication would interfere. The Railway Commissioners dismissed the application as the company's sidings had been *bonâ fide* appropriated for the specific purpose of use as refuge sidings, and that the use of them for the applicant's traffic would interfere with that purpose. *Richard v. G. W. Ry. Co.*, 11 Ry. & Can. Ca. 133.

In *Lancashire Brick and Terra Cotta Co. v. L. & Y. Ry. Co.*, [1902] 1 K. B. 381 and 651; 71 L. J. K. B. 431; 11 Ry. & Can. Ca. 138, it was held by the Court of Appeal (reversing the decision of the Railway Commissioners) that the right given by sect. 76 of the Railways Clauses Act, 1845, is not an absolute right, but only a right to require a connection to be made for the purpose of the use of the railway by the adjoining owner with his own engines and carriages, and that, therefore, an adjoining owner who makes a siding is not entitled to demand a communication with the railway merely for the purpose of establishing a claim to facilities for his traffic under other Acts, and, further, that the words "with safety to the public, and without injury to the railway and without inconvenience to the traffic thereon" do not relate solely to the structural difficulties of making an opening, but refer also to difficulties arising from working the traffic on the railway.

A railway company is not entitled to take up and remove the

Ch. XXI.  
Art. 194.

rails forming a connection between their line and a private siding, where such connection has been made in pursuance of sect. 76 of the Railways Clauses Consolidation Act, 1845. The Railway Commissioners will order such connection to be restored in a proper case. Where the facts as to the circumstances under which such a connection was originally made are in dispute, there is a presumption that it was made under the power of sect. 76 of the Railways Clauses Consolidation Act, 1845. *Portway v. Colne Valley and Halstead Ry. Co.*, 7 Ry. & Can. Ca. 102.

In *Watkinson v. Wrexham, Mold, &c. Ry. Co.*, 3 Ry. & Can. Ca. at p. 9, the Railway Commissioners held that it was a reasonable facility that a railway company should run over a portion of foreign line to collect traffic where such line had been conveniently planned for their having access to it, and where they had no reserve line of their own.

Where it was doubtful whether a junction with a private siding would have been allowed by the Board of Trade to be used, if ordered by the Railway Commissioners and constructed by the railway company, and where the mode of working such junction would have been unsatisfactory and obstructive to the other traffic on the main line, the Commissioners decided that such a junction was not a due facility within sect. 2 of the Railway and Canal Traffic Act, 1854. See *Dublin Distillery Co. v. Mid. G. W. Ry. Co.*, 4 Ry. & Can. Ca. 32.

Nor will a siding connection be ordered under the Railway (Private Sidings) Act, 1904, where it will cause serious inconvenience to the working of the general traffic using an adjacent station, and therefore to the general body of traders using the railway. See *John Greenwood, Ltd. v. Cheshire Lines Committee*, 13 Ry. & Can. Ca. 169.

Where services in connection with a private siding are performed they cannot be the subject of a special charge unless the work done or the cost thereof are more than are incidental to conveyance. *Watkinson v. Wrexham, &c. Ry. Co.* (No. 1), 3 Ry. & Can. Ca. 5; *Portway v. Colne Valley Ry. Co.*, 10 Ry. &

Ch. XXI. Art. 194. Can. Ca. 211; *Vickers, Sons & Maxim, Ltd. v. Mid. Ry. Co.*, 11 Ry. & Can. Ca. at p. 254; *Foster Bros. v. G. E. Ry. Co.*, [1920] 2 K. B. 574; 89 L. J. K. B. 612; 16 Ry. & Can. Ca. 337.

See *ante*, p. 285, where this subject is considered at length.

### PROVISION OF WAGONS.

**195.** A question of reasonable facilities will be determined with reference to the facts of each concrete case, but where the standard conveyance rate includes the provision of wagons it involves a duty on the part of the railway company to provide them. *John Watson, Ltd. v. Cal. Ry. Co.*, 14 Ry. & Can. Ca. at pp. 196 and 202.

Sect. 6 (3) of the Fifth Schedule of the Railways Act, 1921, provides:—

“The company shall not be required to provide trucks for the conveyance of merchandise in respect of which the provision of trucks is not included in the rate for conveyance, nor for the conveyance of lime in bulk or salt in bulk or any merchandise liable to injure trucks, but in all such cases traders shall be entitled to provide their own trucks:

“Provided that any dispute between the company and a trader as to whether any specific kind of merchandise is liable to injure trucks may be referred to the Rates Tribunal, but on any such reference it shall lie on the trader requiring the merchandise to be carried to show that such merchandise will not injure the trucks.”

The last mentioned section, which substantially replaces sect. 2 (a) of the Rates and Charges Orders, 1891—2, is to come

into force on "the appointed day." See sect. 55 of the Railways Act, 1921. Ch. XXI.  
Art. 199.

The conveyance rates authorised by the Rates and Charges Orders, 1891—2, did not include the provision of wagons for class A goods except in the case of the former North-Eastern and the Scottish railway companies. In the schedules of standard charges submitted to the Rates Tribunal by the four group companies, the proposed rates for coal, coke and patent fuel, and also for goods in the first four classes of the new classification, do not include the provision of wagons except on those sections of the respective railways as comprise the former North-Eastern and Scottish railways.

Sect. 2 of the Railway and Canal Traffic Act, 1854, requires every railway company, according to their respective power, to afford reasonable facilities for the receiving, forwarding, and delivering of traffic.

Sect. 86 of the Railways Clauses Act, 1845, authorises railway companies to employ engines, carriages and wagons, and to carry all such passengers and goods as shall be offered to them.

*Primâ facie*, therefore, a railway company have power to employ wagons for all traffic, and are under a duty to supply them as a reasonable facility except where the conveyance rate does not include the provision of wagons.

The question arose in *Watkinson v. Wrexham, Mold, &c. Ry. Co.*, 3 Ry. & Can. Ca. 164, 446; and in *Tharsis Sulphur Co. v. L. & N. W. Ry. Co.*, 3 Ry. & Can. Ca. 455, but in both cases the obligation to supply wagons was directly imposed on the railway companies by special Acts. In the *Tharsis Co.'s Case*, however, at p. 462 of the report, the Commissioners in their judgment spoke of the "general duty" of the railway company to provide wagons.

## FACILITIES FOR PRIVATELY-OWNED WAGONS.

**CA. XXI.**  
**Art. 196.**

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196. A trader is not entitled as a reasonable facility to have ordinary merchandise conveyed on a railway in his own wagon when the railway company are able and willing to supply their own wagon for that purpose. *Spillers and Bakers, Ltd. v. G. W. Ry. Co.*, 14 Ry. & Can. Ca. 52. But this rule will not apply to mineral traffic where it has been the practice of the railway company to convey the same in privately-owned wagons. *Same Case*, at pp. 75 and 82; and *John Watson, Ltd. v. Cal. Ry. Co.*, 14 Ry. & Can. Ca. at pp. 201 and 213.

Although sect. 1 of the Railway and Canal Traffic Act, 1854, defines the word "traffic" as meaning "wagons, trucks . . . and vehicles of every description adapted for running or passing on the railway," this does not entitle a trader to have his own loaded wagon forwarded as a means of conveying the goods contained in the wagon upon paying the rates applicable to such goods. See *Spillers and Bakers, Ltd. v. G. W. Ry. Co.*, 14 Ry. & Can. Ca. at pp. 82 and 88.

In the case above of *Spillers and Bakers, Ltd. v. G. W. Ry. Co.*, the applicants, who were flour millers, claimed to be entitled to forward their flour and grain in their own wagons, and also claimed a rebate off the authorised conveyance rates under sect. 2 (b) of the schedule to the railway company's Rates and Charges Order, 1891, on the ground that the company did not provide wagons for their traffic. The railway company replied that they were not bound to carry traffic in the applicants' wagons, and that they were willing and able to provide suitable wagons for such traffic. The Railway Commissioners held that in view of the following facts:—

(1) The increased haulage of empties involved. (2) The increased cost for sidings and goods yards. (3) The greater time

Ch. XXI.  
Art. 190.

occupied in shunting. (4) The increased cost of working wagons not fully loaded. (5) The large amount invested in wagons by the railway company. (6) The increase in the cost of conveyance to all other persons if traders' wagons were used—it was not a reasonable facility that a trader should have ordinary merchandise carried in his own wagons when wagons could be provided by the railway company. This decision was confirmed by the Court of Appeal.

In *Harrison and Camm v. Mid. Ry. Co.*, 62 L. J. Q. B. 225; 8 Ry. & Can. Ca. 60 (decided before the Rates and Charges Orders, 1891—2), goods belonging to certain other traders were conveyed in new wagons belonging to the applicants. The railway company charged for the conveyance of these goods, and also claimed to be entitled to charge the applicants for hauling their wagons. The Railway Commissioners held that the company could not make this latter charge, as there was no contract between the company and the applicants, the owners of the goods being for the time bailees of the wagons. It is possible, however, that if this case had been decided under the Rates and Charges Orders, 1891—2, the company might have been entitled to charge for this haulage under Part IV. of those Orders as being a special service rendered at the implied desire of the owners of these wagons.

See *L. M. & S. Ry. Co. v. Ince Wagon Co.*, 40 Times L. R. 168.

Sect. 13 of the Ministry of Transport Act, 1919, empowers the Minister of Transport to purchase and to make regulations as to the use and number of privately owned wagons on railways.

In the event of his doing so, sect. 13 (4) of the Act provides that “where the Minister exercises his powers of purchasing wagons under this section, or of prohibiting or restricting the use of privately owned wagons, or of limiting the number of wagons to be so used, the following provisions shall have effect:—

(a) The reasonable facilities which every railway company is required to afford under sect. 2 of the Railway and Canal Traffic

CH. XXI. Act, 1854, as amended or explained by any other Act, shall,  
Art. 198. where the railway wagons of traders of any class have been purchased, include the provision of suitable railway wagons for the use of traders for that class, and it shall be the duty of the Minister so to exercise his powers of working or disposing of the wagons purchased by him as to enable the railway companies to fulfil their obligations under this provision as fully as may be practicable."

#### FORWARDING OF TRAFFIC—THROUGH SERVICES.

197. Sect. 2 of the Railway and Canal Traffic Act, 1854, requires every railway company having a continuous line of railway with that of another company to afford all reasonable facilities according to their powers for forwarding traffic arriving by such other railway.

Sect. 75 (1) of the Railways Act, 1921, enacts:—

"In order to facilitate the transmission of traffic passing or intended to pass to or from places on or beyond the railway of any amalgamated company from or to places on or beyond the railway of any other amalgamated company, every amalgamated company shall, at all times, afford to any such other amalgamated company all reasonable facilities for the convenient working, forwarding, and conveyance of such traffic viâ proper and convenient points of exchange, including through rates and fares, the efficient working of trains at suitable and convenient times so as to satisfy the reasonable requirements of the public for the reception, forwarding, and delivery of such traffic, and shall, so far as circumstances reasonably admit, accommodate, manage, and forward such traffic

as effectually, regularly, and expeditiously as if it were its own proper traffic." CH. XXI.  
Art. 197.

The Railway Commissioners retain their jurisdiction as to through working and continuous routes, but on and after the appointed day the jurisdiction as to through rates and fares is transferred to the Rates Tribunal by sect. 47 of the Railways Act, 1921. See *post*, p. 347. The question of through rates is often bound up with that of a reasonable route, and to this extent the Rates Tribunal will have jurisdiction to deal with questions of through working.

Sect. 14 of the Railway and Canal Traffic Act, 1888, empowers the Railway Commissioners to order two or more railway companies to carry into effect an order of the Commissioners and to make mutual arrangements, and, if necessary, to submit a scheme for that purpose.

The following cases deal with applications by or on behalf of members of the public:—

1. Two railway companies ran trains to C., and each had a station there. The stations were 55 chains apart, but were connected by a line of railway belonging to one of such railway companies. Upon complaint by the inhabitants of the district that no passengers were conveyed on the railway between the two stations, although there was a continuous line of railway, the Railway Commissioners made an order enjoining both the companies to afford a continuous communication for passengers by means of their continuous lines. *James v. Taff Vale and G. W. Ry. Cos.*, 3 Ry. & Can. Ca. 540.

2. Two railway companies ran trains to T. W., and each had a station there. The stations were a mile apart from each other, but were connected by a line of railway, which was used for the transit of goods only. Upon complaint by the inhabitants of the district that no passengers were conveyed on the railway between the two stations, although there was a continuous line



**Ch. XXI.** of railway, the Commissioners ordered the companies to afford  
**Art. 197.** a continuous communication for passengers as well as for goods by means of their continuous lines. *Uckfield Local Board v. L. B. and S. E. Ry. Cos.*, 2 Ry. & Can. Ca. 214.

3. In *Maidstone Town Council v. S. E. Ry. Co. and L. C. & D. Ry. Co.*, 7 Ry. & Can. Ca. 99, each of the companies had a station at Ashford (Kent), which were connected by a line of railway owned by one of the companies. The Railway Commissioners ordered the companies to afford at Ashford all due and reasonable facilities for receiving and forwarding by the railway of the one company all the passenger traffic arriving by the other without any unreasonable delay, and so that no obstruction might be offered to the public desirous of using such railways as a continuous line of communication. See also *Sussex County Council v. L. B. & S. C. and L. & S. W. Ry. Cos.*, 8 Ry. & Can. Ca. 17.

4. In *Victoria Coal Co. v. Midland and Neath & Brecon Ry. Cos.*, 3 Ry. & Can. Ca. 37, a complaint was made by the lessees of a colliery, situate on the Neath & Brecon Railway at a short distance from its junction with the Midland Railway to S., that they were prevented from sending the traffic of their colliery to S. by the railways of the two companies, which formed a direct route, and it was held by the Railway Commissioners that the applicants were entitled to have their traffic conveyed by any route they pleased, and to use the two railways as if they were one continuous line, and that the obligation imposed upon a railway company to afford facilities for receiving and forwarding by their railway traffic coming by another which forms with it a continuous line of communication is not limited to the cases in which a railway company have accommodation to take over such traffic at the point of junction.

5. A navigation company complained that a railway company did not afford due facilities for through traffic because there was no railway connection between the port and a point on the railway near to the company's passenger station. The Railway Commis-

sioners dismissed the application, holding that the railway company had not contravened the provisions of sect. 2 of the Railway and Canal Traffic Act, 1854, relating to reasonable facilities. *Newry Navigation Co. v. G. N. Ry. Co. (Ireland)*, 7 Ry. & Can. Ca. 176. Ch. Art 197.

6. A railway company having the control of two competing routes ought to afford equal facilities to the public by both routes. *Londonderry Port Commissioners v. G. N. of Ireland Ry. Co.*, 5 Ry. & Can. Ca. 282.

7. The facts that the applicants for an order requiring the provision of facilities for through traffic are the owning railway company, and that the defendants are the working railway company, do not prevent such an application being entertained by the Railway Commissioners. *Solway Junction Ry. Co. v. Caledonian and G. & S. W. Ry. Cos.*, 8 Ry. & Can. Ca. 177.

8. The amount of the traffic in respect of which through facilities are sought is a material consideration. *Sussex County Council v. L. B. & S. C. and L. & S. W. Ry. Cos.*, 8 Ry. & Can. Ca. 17.

9. In an early case (*Barret v. G. N. and Mid. Ry. Cos.*, 1 C. B. (N. S.) 423; 26 L. J. C. P. 83; 1 Ry. & Can. Ca. 38), where it was alleged that a railway company arranged the departure of their trains in order to miss connecting trains on a competing company's line, the Court of Common Pleas apparently would have ordered proper through facilities to be given if the above complaint had been established.

The following cases deal with applications by railway or shipping companies:—

1. Where a railway company with running powers over the defendants' railway complained that the defendants refused to work the signals so as to enable the railway to be worked on the block system in pursuance of the power given by a special Act, the Commissioners held that the working of such signals was by sect. 2 of the Railway and Canal Traffic Act, 1854, a due and

CH. XXI. reasonable facility which the defendants should afford for receiving traffic. *G. W. Ry. Co. and Mid. Ry. Co. v. Bristol Port Ry. & Pier Co.*, 5 Ry. & Can. Ca. 94.

Art. 197.

2. By a special Act the H. Company were bound to afford to the G. N. S. Company "all needful accommodations, conveniences and facilities" at their station at Inverness, for which payment was to be made by the G. N. S. Company. The Railway Commissioners held that the forwarding of through traffic and the timing of trains were not "accommodations, conveniences and facilities" for which payment was to be made. *Highland Ry. Co. v. G. N. of Scotland Ry. Co.*, 7 Ry. & Can. Ca. 90.

3. The D. Steampacket Company had their wharf connected by a horse tramway with a branch line of the M. Railway Company. The S. Railway Company had running powers over the M. Company's line to a junction with such branch. By an arrangement between the three companies which had continued for 10 years, through traffic from the S. Company's line to the D. Company's wharf was brought by the S. Company to the junction with the M. Company's branch, whence the M. Company hauled the wagons by horse-power to the wharf. The M. Company having given notice to terminate this arrangement, the D. Company applied for an order that the M. Company should afford all reasonable facilities for through traffic, and that the existing arrangement should be declared to be reasonable. The Railway Commissioners decided that the former arrangement and facilities should be continued, as circumstances must have changed very materially (which was found not to be the case) to justify them in saying that consistently with the provisions of the Railway and Canal Traffic Act, 1854, those facilities could be withdrawn without any offer of other facilities in their place. *City of Dublin Steampacket Co. v. Mid. G. W. Ry. Co.*, 8 Ry. & Can. Ca. 1.

4. The lines of the D. Railway Company and of the M. Railway Company were connected by a loop line. The junction of such loop line with the M. Company had been passed as safe for

passenger traffic by the Board of Trade, but the M. Company nevertheless refused to exchange traffic there on the ground that such junction was unsafe for passenger traffic, and also that the trains coming from the D. Company's line over the loop line and junction would unreasonably interfere with their own traffic. It being proved that the forwarding of traffic from the D. Company's line would not unreasonably interfere with the M. Company's traffic at such junction, the Railway Commissioners made a general order that facilities for forwarding through traffic should be given by the M. Company. *Dublin, Wicklow, &c. Ry. Co. v. Mid. G. W. Ry. Co.*, 8 Ry. & Can. Ca. 39. On XXI.  
Art. 197.

5. In deciding where an exchange of passenger traffic should be made, the facts that one route is shorter than another, or better adapted for fast traffic, or that at one junction there is a joint station, while at another these two separate stations are matters to be considered as affecting the public interest. See *Gt. N. of Scotland Ry. Co. v. Highland Ry. Co.*, 5 Ry. & Can. Ca. 103.

6. Where certain exchange facilities for passenger traffic had been withdrawn, the Railway Commissioners by a majority refused to make an interlocutory order for their restoration pending trial, having regard to the balance of convenience. *G. C. Ry. Co. v. L. & N. W. Ry. Co.*, 17 Ry. & Can. Ca. 89.

Many of the cases as to through rates involve the questions of through working and reasonable route. See *post*, p. 358.

198. Sect. 75 (2) of the Railways Act, 1921, enacts:—

“Except as hereinafter provided, all facilities for the interchange of traffic and the arrangements as to routes and divisions and invoicing of traffic which on the first day of August, nineteen hundred and fourteen, were in operation between any company and any other company who will not form part of the same

**Ch. XXI.  
Art. 198.**

group shall, unless otherwise mutually agreed between the companies concerned, be continued by and be binding upon the amalgamated company of which any such company shall form part, as if such amalgamated company had been party to the said facilities and arrangements, but not so as to enlarge or diminish the scope or duration of any such facilities or arrangements:

“Provided always that no amalgamated company, except with the consent of the other companies concerned, shall alter or discontinue any point of exchange with any other amalgamated company or companies before the expiration of five years from the date when the amalgamation scheme applicable to such first mentioned amalgamated company came into operation, and then only on giving six calendar months’ notice in writing of such intention to the other company or companies, and, if the other amalgamated company or companies shall object to such proposed alteration or discontinuance, the matter shall be referred to the Rates Tribunal, who shall make such order as they shall think just.”

The apparent intention of this sub-section is to deal with working arrangements existing on the 1st August, 1914, which were not contractually binding on the companies who were parties to them. It is conceived that there would have been no necessity to provide for arrangements which were the subjects of contracts and therefore enforceable as such, inasmuch as sect. 3 (1) (c) of the Railways Act, 1921, required that every amalgamation scheme under that Act should incorporate Part V. of the Railways Clauses Act, 1863, and all subsisting contracts of a company therefore would be binding on the group company, of which such company became part.

The jurisdiction of the Rates Tribunal under this sub-section apparently will come into operation at the end of five years from the date of the respective amalgamations, and in the meantime it would seem that complaints as to the withdrawal of the facilities referred to in this sub-section will be dealt with by the Railway Commissioners. See *G. C. Ry. Co. v. L. & N. W. Ry. Co.*, 17 Ry. & Can. Ca. 89.

Ch. XXI.  
Art. 198.

199. Sect. 75 (4) of the Railways Act, 1921, enacts:—

“No constituent or subsidiary company and no amalgamated company shall be at liberty to refuse to receive, forward, or deliver traffic consigned by a through route on the ground that such traffic can be carried by a route which has, through the operation of this Act, become local to such company.”

In *G. U. Ry. Co. v. L. & Y. Ry. Co.*, 13 Ry. & Can. Ca. 266, the Railway Commissioners refused to recognise the railway practice under which traffic arising and terminating on the line of one company is deemed to be “local” to that company, and therefore not liable to be carried by an alternative joint route partly owned by that company. See also *Didcot Ry. Co. v. G. W. and L. & S. W. Ry. Cos.*, 9 Ry. & Can. Ca. 210.

200. Until works necessary for the exchange of traffic at the junction of connecting lines are completed and sanctioned by the Board of Trade, the route is not a continuous line of railway communication. But the fact that there are disputes between the companies is no answer to an application made on behalf of the public. *Hamman, Foster and others v. G. W. Ry. Co. and others*, 4 Ry. & Can. Ca. 181.

In the above case the S. and M. Company were the owners of a railway in two sections connected by lines belonging to two other

CA. XXI.  
Art. 200.

companies and worked by the Great Western Ry. Co. The S. and M. Company did not book or work traffic between their two sections, and the Great Western Co. did not book from the stations on the lines worked by them to stations on either section of the S. and M. Railway. To permit of the exchange of traffic required by the applicants, siding and other accommodation at one of the junctions was necessary. It was held by the Commissioners that the failure to provide this while the companies were considering the alterations which were necessary to enable the S. and M. Company to exercise their running powers over the connecting lines, was not a failure to provide facilities for the receiving, forwarding, and delivery of traffic; and that the route, until so completed and sanctioned by the Board of Trade, was not a continuous line of railway communication.

The absence of proper exchange facilities, *e.g.*, exchange sidings, may be a reason for refusing an application for a through route. See *G. C. Ry. Co. v. L. & Y. Ry. Co.*, 13 Ry & Can. Ca. 266.

## CHAPTER XXII.

### THROUGH RATES AND FARES.

**201.** On and after "the appointed day" through rates and fares will be regulated by sect. 47 of the Ch. XXII.  
Art. 201.  
Railways Act, 1921.

Sect. 47 of the Railways Act, 1921, is as follows:—

"(1) Where on or after the appointed day in pursuance of section twenty-five of the Railway and Canal Traffic Act, 1888, a railway company or person requires traffic to be forwarded at through rates or fares the company or person shall give written notice of the proposed through rate or fare to each company owning any part of the through route (hereinafter called 'the forwarding company') stating both its amount and the route by which the traffic is proposed to be forwarded, and, where a company gives such notice, it shall also state the apportionment of the through rate or fare.

"Each forwarding company shall, within ten days or such longer period as the rates tribunal prescribe after the receipt of such notice, by written notice inform the company or person requiring the through rate or fare whether it agrees to the rate or fare and the route, and, if it objects to either, the grounds of the objection.

"(2) The rate or fare shall come into operation at the expiration of the said ten days or other prescribed period:

"Provided that, if before that expiration any such objection as aforesaid has been sent, or if, in the case of a rate, the rate is less than five per cent. or more than forty per cent. below the



**Ch. XXII.** combined standard charges of all the forwarding companies, the  
**Art. 201.** matter shall be referred to the rates tribunal for their decision.

"(3) If an objection is made to the granting of the rate or fare or to the route, the rates tribunal shall consider whether the granting of the rate or fare is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate or fare accordingly or fix such other rate or fare as may seem to the rates tribunal just and reasonable.

"(4) Where upon the application of a railway company or person requiring traffic to be forwarded a through rate or fare is agreed to by the forwarding companies or is made by order of the rates tribunal, the apportionment of such through rate or fare, if not agreed upon between the forwarding companies, shall be determined by the rates tribunal.

"(5) If there is no objection except as to the apportionment of the rate or fare, the rate or fare shall come into operation as provided by subsection (2) of this section in the case where no objection has been sent by a forwarding company, but the decision of the rates tribunal as to its apportionment shall be retrospective; in any other case the operation of the rate or fare shall be suspended until the decision is given.

"(6) In apportioning a through rate or fare between the railway companies concerned the rates tribunal shall take all the circumstances into account, including any special charges, fixed allowances, and minimum mileage amounts, which any company may have been entitled to make or receive in respect of the route or any part of the route over which such through rate or fare applies.

"(7) For the purpose of calculating the through rate or fare, the standard charge for each portion of the through route shall be that which would have been applicable to such portion had the conveyance for the entire distance of the through route been upon the railway of the company owning such portion, and as if throughout the through route the mileage had been continuously

upon one railway, and shall be calculated on the shortest working distance between the two points over the railways of the forwarding companies: GA. XXII.  
Art. 281.

“ Provided that in such a calculation effect shall be given to any statutory provision whereby a special mileage is allotted in respect of any portion of railway.

“(8) The rates tribunal shall have power to decide that any proposed through rate or fare is just and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of the through rate or fare than the standard rate or fare which the company is entitled to charge, and to allow and apportion the through rate or fare accordingly.

“(9) Where a railway company uses, maintains, or works, or is a party to an arrangement for using, maintaining, or working, vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such vessels and to the traffic carried thereby.

“(10) Where part of the through route is over a railway of a light railway company or of a railway company to which no schedule of standard charges applies, or is by sea, this section shall have effect as if the ordinary rate or fare for the time being chargeable for the conveyance of the traffic over that railway or by the sea route were the standard charge.

“(11) This section shall not apply where part of the through route is over a canal.”

Jurisdiction as to the variation or cancellation of through rates is given to the Rates Tribunal as from the appointed day by sect. 28 (1) (b) of the Railways Act, 1921.

Sect. 2 of the Railway and Canal Traffic Act, 1854, required every railway company, according to their respective powers, to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic on and from their several railways, so that no obstruction might be offered to the public desirous of using such railways as a continuous line of communication.

**CH. XXII.** It was doubtful whether such reasonable facilities included the  
**Art. 201.** forwarding of traffic at through rates. In order to remove these doubts, sect. 11 of the Regulation of Railways Act, 1873, was passed, enacting that a railway company, but not a trader, should be entitled to have through traffic forwarded at through rates from off their own line over that of another company.

Sect. 11 of the Act of 1873 was repealed by sect. 59 of the Railway and Canal Traffic Act, 1888, and replaced by sect. 25 of that Act. This section enacted that the facilities to be afforded by a railway company under sect. 2 of the Act of 1854 should include the forwarding of through traffic at through rates at the request of any other railway company and also of any person interested in the traffic, thus enabling a trader as well as a railway company to apply for a through rate. In the Acts of 1873 and 1888, "rates" included "rates, tolls and fares."

Sect. 25 of the Act of 1888 remains in force up to "the appointed day," when it will be mainly repealed by sect. 86 and the Ninth Schedule, Part II., of the Railways Act, 1921, except as regards canals, and will be replaced and, to some extent, modified by sect. 47 of that Act.

Sect. 75 (1) of the Railways Act, 1921, requires every amalgamated company to afford to any other amalgamated company all reasonable facilities, including through rates and fares, for traffic passing from the railway of one such company to that of another. See p. 338, where this section is more fully considered.

By sect. 3 of the Regulation of Railways Act, 1873, "railway company" is defined as including "any person being the owner or lessee of or working any railway in the United Kingdom, constructed or carried on under the powers of any Act of Parliament," and "canal company" includes "any person being the owner or lessee of or working or entitled to charge tolls for the use of any canal in the United Kingdom, constructed or carried on under the powers of any Act of Parliament." These expressions have the same meaning where used in the Railway and Canal Traffic Act, 1888. See sect. 55 of that Act.

By sect. 85 of the Railways Act, 1921, the expression "railway company" includes, for the purposes of that Act, a joint committee of two or more railway companies and the owners of any railway to which at the passing of the Act a Railways Rates and Charges Order within the meaning of Part III. of the Act applies, and, where a railway is owned by a joint committee of two or more railway companies, it shall, for the purposes of the Act, be deemed to be jointly owned by those companies.

Ch. XXII.  
Art. 391.

The subject of through rates was of greater importance in the early history of railways than it is to-day. There were then a large number of relatively small companies, which in many cases did their best to obstruct rather than to assist their neighbours, but the amalgamations effected under the Railways Act, 1921, have now reduced the number to the four group companies and a few survivors. The probable result therefore is that the number of applications for through rates in the future will be reduced. The decisions referred to under this head are given as a guide to the former practice of the Railway Commissioners in dealing with this class of case. These questions, however, are questions of fact, and the importance of these decisions should not be exaggerated. See *Dearne Valley Ry. Co. v. G. N. & G. C. Ry. Cos.*, 15 Ry. & Can. Ca. at p. 212.

The right of proposing through rates was not limited to the railway companies which had the conveyance of the traffic, or the ownership of the lines on which it was either received or delivered; but any railway company whose lines were part of a through route, and who, though not themselves working it, had, nevertheless, a substantial interest in the traffic of their lines and the proceeds of it, were capable of proposing through rates. *Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.* (No. 3), 2 Ry. & Can. Ca. 227; affirmed by the Court of Session, 5 Sess. Ca. (4th Ser.) 995; 3 Ry. & Can. Ca. 145; *Central Wales & Carmarthen Junction Ry. Co. and Mid-Wales Ry. Co. v. G. W. Ry. Co., L. & N. W. Ry. Co., Mid. Ry. Co., and Pembroke & Tenby Ry. Co.*, 4 Ry. & Can. Ca. 110;

Ch. XXII. affirmed by the Queen's Bench Division, 10 Q. B. D. 231; 52  
Art. 201. L. J. Q. B. 211; 4 Ry. & Can. Ca. 110.

To entitle a railway company to apply for through rates, it was enough that they were a company with an interest in the through route, and it was not necessary to measure their interest, and to refuse them a *locus standi*, even though their proposals were more of a detriment to other companies than a benefit to themselves. *Severn & Wye & Severn Bridge Ry. Co. v. G. W. Ry. Co.*, 5 Ry. & Can. Ca. 156.

It would appear that a formal notice of the proposed rate was unnecessary under the former practice, provided that sufficient notice had been given to each of the companies concerned containing the information mentioned in sect. 25 of the Act of 1888, or at least stating facts from which such information could be inferred. A general intimation set out in the agenda paper for a future meeting of railway managers at the railway clearing house was insufficient. *Forth Bridge and N. B. Ry. Cos. v. G. N. of S. Ry. Co. and others*, 11 Ry. & Can. Ca. pp. 1 and 14.

Where through rates were already in operation, and one of the parties to them applied to the Railway Commissioners for through rates of the same amount, but with a new apportionment, the Court of Appeal held that the application was outside the jurisdiction of the Commissioners, the power of apportionment being only incidental to the grant of facilities. *Manchester Ship Canal v. L. & N. W. Ry. Co.*, 14 Ry. & Can. Ca. 141.

Where a railway company in a notice given under the corresponding provision of sect. 25 of the Act of 1888 failed to state the proposed apportionment, the Railway Commissioners held that this procedure was directory and not mandatory. *G. W. Ry. Co. v. Dublin and S. E. Ry. Co.*, 13 Ry. & Can. Ca. at p. 235.

Where a railway company had entered into an agreement with another company, whereby the latter company worked their line, and it was agreed that the rates and fares to be charged should be fixed by a joint committee of the two companies, it was held

that this agreement did not relate to through rates, and that the owning company were the proper parties to apply for them. Ch. XXXII.  
Art. 281.

*Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.* (No. 3), 2 Ry. & Can. Ca. 227; 3 Ry. & Can. Ca. 145.

A canal company had a dividend guaranteed to them by a railway company under a statute, which provided that they should not reduce or vary their tolls without the consent of the railway company. It was held by the Exchequer Division that the consent of the railway company to the granting of a through toll reducing the tolls of the canal company was required before the Railway Commissioners could make an order. *Warwick & Birmingham Canal Co. v. Birmingham Canal Co.*, 3 Ry. & Can. Ca. 324.

Where a special Act provided that certain railway companies should afford all proper and sufficient facilities, including through rates, to traffic passing to, from, or over the line of another railway company, and that the conditions upon which such facilities should be afforded should, failing agreement, be settled by arbitration, the Queen's Bench Division held that the Act did not grant through rates absolutely, and that the sufficiency of existing through rates and the propriety of granting others were matters which, failing agreement, should be referred to arbitration. *G. W. Ry. Co. v. Central Wales, &c. Ry. Co.*, 5 Ry. & Can. Ca. 1.

Where a company owning a small length of railway, which, in practice, was treated as a private siding by another railway company, applied for through rates, it was held that while technically a railway company, their application was not justified. *Stocksbridge Ry. Co. v. G. C. Ry. Co.*, 13 Ry. & Can. Ca. 335.

The owners of a light railway may apply for through rates. See *Trafford Park Co. v. Cheshire Lines Committee*, 16 Ry. & Can. Ca. 10.

A canal company authorised by an Act of Parliament to construct railways on their quays and land, although under no obligation to admit the public as carriers upon their lines under

Ch. XXII. the Railways Clauses Act, 1845, were a "railway company"  
Art. 201. within sect. 25 of the Traffic Act, 1868. *Manchester Ship Canal Co. v. Mid. Ry. Co.*, 10 Ry. & Can. Ca. 54.

Where a railway company took exception to the Commissioners' jurisdiction to entertain an application for through rates, on the ground that there was an agreement, confirmed by Act of Parliament, in existence which provided for through rates being fixed between the two companies, and for a reference to arbitration in the event of there being a difference as to the amounts at which those through rates should be fixed, the Commissioners held that they had jurisdiction to entertain the application. *Met. Dist. Ry. Co. v. Met. Ry. Co.*, 5 Ry. & Can. Ca. 126.

The Port of London Authority is a "railway company" for the purpose of through rates. Sect. 31 (1) of Port of London Act, 1908.

**202.** Where a through rate, if sanctioned, would involve an interference with the legal right of an opposing company to regulate their fares within their maximum powers, or would force them to lower their own rate to the new level, or would otherwise interfere with vested legal rights, there must be evidence of public interest and reasonableness in favour of the rate and route proposed adequate to outweigh these counter-vailing considerations. *Didcot, &c. Ry. Co. v. L. & S. W. Ry. Co. and others (No. 2)*, 10 Ry. & Can. Ca. 9; *Brunner, Mond & Co. v. Cheshire Lines Committee*, 14 Ry. & Can. Ca. 124.

In *Brunner, Mond & Co. v. Cheshire Lines Committee*, 14 Ry. & Can. Ca. 124, the applicants asked for a reduced through rate over a new through route between two points between which a through rate of a higher amount than that proposed rate was already in force by another route. They also offered to guarantee

a minimum weekly traffic load. The Railway Commissioners refused the application as there was no evidence of public interest, and the intention of sect. 25 of the Traffic Act, 1888, was not to reduce rates. Ch. XXII.  
Art. 368.

As a general rule, however, a through rate by an alternative route is in the public interest. See *Glenavon Garw Collieries v. Rhondda & Swansea Bay Ry. Co.*, 16 Ry. & Can. Ca. 65. The general railway practice has been to fix rates by alternative longer routes at the same amounts as those in force by the shortest existing route. See *L. & Y. Ry. Co. v. Hull & Barnsley Ry. Co.*, 15 Ry. & Can. Ca. 59. This principle is recognised and maintained by sect. 52 of the Railways Act, 1921, in cases where the longer route is not longer by more than 30 per cent.

There must be strong evidence that existing charges are unduly high to justify an interference with a system of inclusive group rates whereby the public enjoy alternative facilities for their traffic. *Port of London Authority v. Mid. Ry. Co.*, 15 Ry. & Can. Ca. 23.

In the above *Port of London Case*, through inclusive charges were in operation between various points on the Midland Co.'s system and all Thames docks and wharves, whereby the trader had the option of having his traffic delivered at the ship-side by railway, cart or barge, the Port Authority receiving out of the inclusive charge certain fixed sums for services rendered and dock dues. Upon the Authority proposing certain through rates, which would have had the effect of destroying this system, the Railway Commissioners, in the absence of evidence that the existing through charges were unduly high, dismissed the application.

There is no *prima facie* case in favour of specially low charges, and the *onus* is upon the applicant to show reasons why the forwarding company should carry for less than they would be likely to receive out of agreed through rates. *Belfast Central Ry. Co. (No. 3) v. G. N. Ry. Co. (Ireland)*, 3 Ry. & Can. Ca. at p. 166.

The Railway Commissioners did not grant through rates which



Ch. XXII. would have had the effect of raising a long-established rate and  
Art. 308. unsettling interests which had been founded on its continuing, unless the railway company asking for such through rates showed that an alteration was required to give them a fair return upon the traffic carried. *G. N. of Ireland Ry. Co. v. Belfast Central Ry. Co.*, 3 Ry. & Can. Ca. 411.

The Railway Commissioners held, that where a good *prima facie* case of public interest existed on general considerations, it was not necessary to bring evidence to prove a special case as well. *Central Wales, &c. Ry. Co. v. G. W. Ry. Co.*, 4 Ry. & Can. Ca. 110.

A coal rate was a sufficiently paying rate to be allowed if the earnings per truck were not less than the earnings by other trucks of a goods train, and if the company's profit on coal was not less than their profit on their goods traffic generally. *Belfast Central Ry. Co. v. Gt. N. Ry. Co. (Ireland)*, 4 Ry. & Can. Ca. 159.

The Commissioners refused to fix and apportion through rates on the ground that the proposed rates were not in accordance with a statutory agreement made between two companies over whose railways the rates were to be charged. *North Monkland Ry. Co. v. N. B. Ry. Co.*, 3 Ry. & Can. Ca. 282.

The fact that two railway companies had entered into a non-statutory agreement not to reduce existing fares by their joint route was not in itself sufficient to prevent the Railway Commissioners from ordering that lower through fares by a new competing route should be put into operation. See *G. W. Ry. Co. v. Dublin & S. E. Ry. Co.*, 13 Ry. & Can. Ca. 227.

It was doubtful whether the Railway Commissioners had power to rescind a through rate which had become valid, more especially where the application sought to abolish a through rate and not to replace an existing rate by a new rate. See *G. N. Ry. Co. (Ireland) v. Donegal Ry. Co.*, 11 Ry. & Can. Ca. 47.

## THROUGH BOOKING.

**203.** Through booking was a facility which might be granted under sect. 2 of the Railway and Canal Traffic Act, 1854, if it was reasonable in the interest of the public. It was not necessary, in order to establish a claim to through booking, that the service should be continuous by the same trains, or by a connection between trains. *Innes v. London, Brighton and London & S. W. Ry. Cos.*, 2 Ry. & Can. Ca. 155; *Sussex County Council v. L. B. & S. C. and L. & S. W. Ry. Cos.*, 8 Ry. & Can. Ca. 17; *Didcot, &c. Ry. Co. v. L. & S. W. Ry. Co.* (No. 2), 10 Ry. & Can. Ca. at p. 15.

Ch. XXII  
Art. 203.

An application for through booking over a route passing over several lines of railway was not a matter of right, but the granting of it was governed by the same considerations as those that affected an application for a through rate under sect. 25 of the Railway and Canal Traffic Act, 1888, *i.e.*, that the application was reasonable and in the public interest. *Didcot, &c. Ry. Co. v. G. W. Ry. Co. and L. & S. W. Ry. Co.*, [1897] 1 Q. B. 33; 66 L. J. Q. B. 33; 10 Ry. & Can. Ca. 1; overruling on this point *G. W. Ry. Co. v. Severn & Wye Ry. Co.*, 5 Ry. & Ca. Tr. Ca. 170. The Railway Commissioners had power under sect. 2 of the Railway and Canal Traffic Act, 1854, upon proof that it was reasonable and in the interest of the public to order through booking of both passengers and goods at the total sum of the local rates charged on the two or more lines of railway constituting the through route. *Didcot, &c. Ry. Co. v. L. & S. W. Ry. Co.*, 10 Ry. & Ca. Tr. Ca. 9.

The expression "through booking" has been applied to orders made by the Railway Commissioners which enjoin that traffic shall be carried over two or more lines at one booking, without

Ch. XXII. interfering with the amount of the various rates included in the  
art. 203. one payment; while those orders which deal with the rates as well are called "orders for through rates." See judgment of Collins, J., in *Didcot, &c. Ry. Co. v. L. & S. W. Ry. Co. and others*, 10 Ry. & Can. Ca. at p. 15.

Where a railway company received goods for conveyance from places on their own railway to places on the contiguous railway of another company, it was held that the sending company must allow through booking from their stations to stations on the second company's line, and that through booking was a facility which railway companies may reasonably be required to afford. *Uckfield Local Board v. London, Brighton, and South Eastern Ry. Cos.*, 2 Ry. & Ca. Tr. Ca. 214.

### REASONABLE ROUTE.

**204.** Where through rates are in operation by one of two alternative routes, it is *primâ facie* necessary and in the public interest that they should be in force upon the other if it is to be used as an alternative route and maintain a competition. *Central Wales, &c. Ry. Co. v. L. & N. W. and G. W. Ry. Cos.*, 4 Ry. & Can. Ca. 211; *Glenavon Garw Collicries v. Rhondda and Swansea Bay Ry. Co.*, 16 Ry. & Can. Ca. 65; *L. & Y. Ry. Co. v. Hull and Barnsley Ry. Co.*, 15 Ry. & Can. Ca. 59.

But it does not necessarily follow that because there is an existing through rate by one route between two points that an application for a through rate of the same amount by another route between the same points will be granted. All the circumstances will be considered, including the powers of the various railway companies concerned to demand rates in view of the

length of transit over their respective lines. *Corporation of Birmingham v. M. S. & L. Ry. Co.*, 10 Ry. & Can. Ca. 62. Ch. XXXI.  
Art. 204.

Upon an application for a through route and rate, it was proved that the proposed route was 56 miles shorter than the route over which the traffic was being carried, and was worked not less conveniently as regards the railway companies by whom the traffic was handled before it got to its destination; also that the proposed rate was of less amount, and presumably, therefore, more beneficial to the public.

The Commissioners held that a case of general public interest having been proved, it was not necessary to also prove a special case. *Central Wales Ry. Co. v. G. W. Ry. Co.*, 4 Ry. & Can. Ca. 110.

The principles upon which an application for through rates over a competing route should be dealt with were considered in *Didcot, &c. Ry. Co. v. G. W. Ry. Co. and L. & S. W. Ry. Co.*, 9 Ry. & Can. Ca. 210. The D. Co. applied for an order allowing through rates between Southampton, on the L. & S. W. Co.'s line, to the London goods terminus of the G. W. Co. (Paddington) and two other G. W. stations. The L. & S. W. Co., by means of their own main line, gave a direct communication between Southampton and their London goods terminus (Nine Elms) and the two places mentioned in the application. The Railway Commissioners (Collins, J., and Sir F. Peel) decided:—

(1) That it was no answer to the application for through rates, so far as through booking or invoicing was involved, that it touched traffic which the L. & S. W. Co. carried as local traffic and claimed to be non-competitive, or that it set up a mixed control over rates to and from Southampton;

(2) That the route was reasonable, mainly for the reason that in 1882 Parliament had authorised the applicants to construct

Ch. XXII an independent line into Southampton. (This had since been  
Art. 204. abandoned);

(3) That the proposed route was in the public interest, because (a) although the L. & S. W. main line possessed advantages as regards length and methods of working, the G. W. terminus at Paddington had advantages over the L. & S. W. terminus at Nine Elms as regards traffic destined for certain other parts of London, and also (b) because the views of the local authorities in the districts concerned (which views were in favour of the proposed route) were deserving of attention.

See also *Didcot Ry. Co. v. L. & S. W. Ry. Co.*, 10 Ry. & Can. Ca. 9.

Where a railway company possessed by means of their own line and certain statutory running powers the means of affording a competitive but considerably longer route to certain points off their own system, it was held that they were entitled to through rates between stations on their own line and all stations on the system owned by their competitors where the distance by their route was not more than 50 per cent. in excess of that by the competing route, the rates in both cases to be of equal amounts and based on the shortest distance. *Gt. S. & W. Ry. Co. v. Dublin & S. E. Ry. Co.*, 13 Ry. & Can. Ca. 176.

As to standard rates by circuitous route, see sect. 52 of the Railways Act, 1921, where a "circuitous route is defined as one which is 30 per cent. or more longer than the shortest route."

A route is not unreasonable because it is proposed to hand over to the receiving company traffic at a point a few miles distant from its destination, although such company could receive it at a point further distant from its destination. *Caledonian Ry. Co. v. North British Ry. Co.* (No. 4), 3 Ry. & Can. Ca. 403.

A sending company having two alternative routes for through traffic, one eight miles longer than the other, proposed, for the purpose of a through rate, to carry by the longer one, at a double cost and labour in working and maintaining the junction, with the object of making their own mileage more, and the mileage

of the receiving company less. It was held, that such longer route was not a reasonable route, within the meaning of sect. 11, sub-sect. 5, of the Regulation of Railways Act, 1873. *E. & W. Junc. Ry. Co. v. G. W. Ry. Co.*, 1 Ry. & Can. Ca. 331. Ch. XXII:  
Art. 304

The Commissioners held that a route was a reasonable one, within the meaning of sect. 11 of the Regulation of Railways Act, 1873, which was capable of maintaining a competition with quicker or cheaper routes, and efficient enough to be likely to be preferred for some portion of the traffic. *Severn & Wye, &c. Ry. Co. v. G. W. Ry. Co.*, 5 Ry. & Can. Ca. 170.

A route is not unreasonable merely because it involves that the traffic will have to pass through a congested length of railway and an alternative route is available, unless the traffic will amount to an obstruction, that is to say, that it will create such delay as will cause loss and inconvenience to traders interested in existing traffic. *Dearne Valley Ry. Co. v. G. N. & G. C. Ry. Cos.*, 15 Ry. & Can. Ca. 202.

The fact that traffic is "local" to a railway company (*i.e.*, can be carried throughout over their own line) does not entitle them to refuse to accept traffic offered by another company at a point of junction on a competing route. See *G. C. Ry. Co. v. L. & Y. Ry. Co.*, 13 Ry. & Can. Ca. 266; and Railways Act, 1921, s. 75 (4).

### THROUGH LAND AND SEA RATES.

**205.** Sect. 47 (9) of the Railways Act, 1921, enacts:—

"Where a railway company uses, maintains, or works, or is a party to an arrangement for using, maintaining or working, vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section (*i.e.*, as to through

Ch. XXII.  
Art. 205.

rates) shall extend to such vessels and to the traffic carried thereby."

The following cases deal with through land and water rates:—

An agreement between a steamboat company and a railway company that the steam vessels belonging to the former should ply between two ports "for one year and thereafter until written notice to terminate the agreement six months from the date of such notice," . . . and containing also a clause that any dispute or difference as to the provisions of the agreement should be referred to the decision of an arbitrator to be appointed by the Board of Trade, was an arrangement for using, maintaining, or working steam vessels. *The Belfast Central Ry. Co. v. G. N. Ry. Co. (Ireland)* (No. 4), 4 Ry. & Ca. Tr. Ca. 379.

Where a railway company applying for through rates had agreed with C. for the carriage of passengers by steamers in connection with their lines, it was held that there was an arrangement for using such steamers. *Greenock & Wemyss Bay Ry. Co. v. Caledonian Ry. Co.* (No. 3), 3 Ry. & Ca. Tr. Ca. 145.

To constitute an arrangement for using vessels, the agreement between the railway company and the owner of the steamboat must be definite, and contain an obligation on the part of the steamboat proprietor to ply between specified ports. *Caledonian Ry. Co. v. Greenock & Wemyss Bay Ry. Co.* (No. 2), 4 Ry. & Can. Ca. 70.

In an application for through railway and sea rates between certain places in Ireland, and other places in Great Britain, by a company owning a longer route than two existing routes, it was held that through rates of the same amounts as the existing rates should be granted where the distance by the longer route was not more than 50 per cent. in excess of the distances by the existing routes. *Gt. S. & W. Ry. Co. v. Dublin & S. E. Ry. Co.*, 13 Ry. & Can. Ca. 176; see also *Gt. W. Ry. Co. v. Dublin & S. E. Ry. Co.*, 13 Ry. & Can. Ca. 227.

A shipowner who undertakes to carry goods between two points

partly by his ship and then by railway, is not necessarily entitled to have the goods from his ship carried over the railway part of the transit at a rate which is equal to the railway proportion of a through railway and sea rate between the same points. *Jescott v. L. & Y. Ry. Co.*, 13 Ry. & Can. Ca. 276. Ch. XXII.  
Art. 206.

The Gt. S. & W. Ry. Co. of Ireland having established with the G. W. Ry. Co. lower through rates and fares, *viâ* their then new Rosslare cross-channel route, than those in force *viâ* Dublin and Holyhead, the Dublin Port and Harbour Board, who were protected by provisions in a special Act, and the L. & N. W. Ry. Co. complained to the Railway Commissioners that they were placed at a disadvantage by the lower competing rates. It was held that through traffic *viâ* Rosslare was not entitled to a differential rate, and that through rates, based on the principle of equal rates where there were reasonable competitive routes, must be put in force by the Gt. S. & W. Co., and, further, that a route was reasonable when it did not exceed the distance by the shortest route by more than 50 per cent. *Dublin Port and Docks Board v. Gt. S. & W. Ry. Co.*, 13 Ry. & Can. Ca. 209.

See also *Ayr Harbour Trustees v. Glasgow & S. W. Ry. Co.*, 4 Ry. & Can. Ca. 81; *Cal. Ry. Co. v. Greenock & Wemyss Bay Ry. Co.*, 4 Ry. & Can. Ca. 135; *Dublin Steam Packet Co. v. L. & N. W. Ry. Co.*, 4 Ry. & Can. Ca. 10.

#### APPORTIONMENT OF THROUGH RATES.

**206.** In apportioning a through rate a mileage basis is generally, but need not necessarily be, adopted. A rate may be apportioned in such a way as to enable one of the interested railway companies to make a rebate out of their share of such rate to the trader paying the rate. *Glenavon Garw Collieries, Ltd. v. Rhondda and Swansea Bay Ry. Co.*, 16 Ry. & Can.



Ch. XXII.  
Art. 206.  
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Ca. 65, at p. 83; see also *G. N. Ry. Co. (Ireland)*  
v. *Donegal Ry. Co.*, 11 Ry. & Can. Ca. 47.

The power possessed by the Railway Commissioners to fix the amount and apportionment of a through rate under sect. 25 (5 and 6) of the Railway and Canal Traffic Act, 1888 (now repealed as from the appointed day by sect. 86 and the Ninth Schedule of the Railways Act, 1921), was the only instance in which they could settle the actual sum payable to a railway company.

The Railway Commissioners' jurisdiction was discretionary as to taking into consideration an exceptionally heavy capital outlay required for one part of a through route. See *Forth Bridge and N. B. Ry. Cos. v. G. N. of S. Ry. Co. and others*, 11 Ry. & Can. Tr. Ca. 14.

As a general rule, in apportioning through rates, it is reasonable that where a railway company have a very short share in a through route, it should have more in proportion than the company which have a long share. *Serern & Wye, &c. Ry. Co. v. G. W. Ry. Co.*, 5 Ry. & Can. Ca. 156, at p. 167.

Where traffic was carried on one of two railways for a short distance only, the charge which that company might make for short distances under their special Act was taken into account in their favour. *Tul-y-llyn Ry. Co. v. Cambrian Ry. Co.*, 5 Ry. & Can. Tr. Ca. 122.

In *Manchester Ship Canal Co. v. L. & N. W. Ry. Co.*, 14 Ry. & Can. Ca. 141, the Court of Appeal held that the Railway Commissioners had no jurisdiction to re-apportion an existing agreed through rate with an agreed apportionment.

Where a railway company were required to accept traffic at a through rate by a new route competing with an existing route partly owned by them, the new through rate was so apportioned as to give them the same rate per ton per mile as they obtained from the rate over the existing route. *L. & Y. Ry. Co. v. Hull & Barnesly Ry. Co.*, 15 Ry. & Can. Ca. 59.

There was no rule under the former practice of the Commissioners that land and sea through rates were to be apportioned according to mileage. *Gt. S. & W. Ry. Co. v. City of Cork Steam Packet Co.*, 15 Ry. & Can. Ca. 67. Ch. XXII.  
Art 206.

In deciding what was a fair apportionment, the Railway Commissioners took into consideration any amounts chargeable for terminals, and were not necessarily bound by general railway practice on this point. *Dearne Valley Ry. Co. v. G. N. Ry. Co.*, 15 Ry. & Can. Ca. 210. They also took into consideration the fact that part of the proposed route was congested, thus entailing extra work on the part of the company owning that section. *Ibid.* at p. 211.

In view of the amalgamations effected by the Railways Act, 1921, it would appear to be unnecessary to consider the duties which a railway company working another company's line owe to the owning company. The following cases on the subject may be referred to:--

*Exeter Ry. Co. v. G. W. Ry. Co.*, 12 Ry. & Can. Ca. 182.

*Sheffield District Ry. Co. v. G. C. Ry. Co.*, 14 Ry. & Can. Ca. 299.

*Mold and Denbigh Ry. Co. v. L. & N. W. Ry. Co.*, 16 Ry. & Can. Ca. 40.

## CHAPTER XXIII.

## EQUALITY OF TREATMENT—UNDUE PREFERENCE.

## EQUALITY OF TREATMENT.

Chap.  
XXIII.  
Art. 207.

207. Sect. 90 of the Railways Clauses Act, 1845, enacts:—

A railway company may, subject to the provisions and limitations in their special Act contained, “from time to time alter or vary the tolls by the special Act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway.”

In order to establish a case of inequality of charge it is necessary to show that goods have in fact been carried for a customer at a lower rate, and not merely that the railway company have “a rate in force” in the sense that they are prepared to carry at

such rate. The mere existence of such a lower rate in the company's rate book is no evidence that goods have in fact been carried at that rate. *Taylor v. Met. Ry. Co.*, [1906] 2 K. B. 55; 75 L. J. K. B. 735.

Chap.  
XXIII.  
Art. 307.

The word "tolls" in this section includes a charge made by a company as carriers. *L. & N. W. Ry. Co. v. Evershed*, 3 App. Cas. 1029; 48 L. J. Q. B. (H. L.) 22; 2 Q. B. D. 254; and sect. 3 of the Railways Clauses Act, 1845.

The words "goods of the same description" and "under the same circumstances," mean goods of the same description for the purposes of carriage, and they are used with reference to the conveyance of goods and not to the persons who send them. *G. W. Ry. Co. v. Sutton*, L. R. 4 H. L. 226; 38 L. J. Ex. (H. L.) 177.

By "the same circumstances" is meant the same circumstances as regards the railway company, *i.e.*, the same amount of labour and cost to them.

Lord Blackburn, in *L. & N. W. Ry. Co. v. Evershed*, 3 App. Cas. at p. 1038, said: "What the legislature has clearly said is, that the tolls must be charged equally to all persons under the same circumstances. I think that means under similar circumstances as to the goods, not as to the person. I do not think the person comes into the question at all."

Equality clauses similar to this section were inserted in most of the special Acts passed before this general enactment.

The preamble of this section, *viz.*, "Whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly, either in the hands of the company or of particular parties," shows that the legislature intended to impose on railway companies acting as carriers an obligation beyond what is imposed at common law, so that an unequal charge to different persons under similar

**Chap.**  
**XXIII.**  
**Art. 207.**

circumstances is by virtue of the statute extortionate. *Per* Blackburn, J., in *G. W. Ry. Co. v. Sutton*, L. R. 4 H. L. at p. 238, where the cases upon this section and upon the corresponding section in the special Acts are reviewed. These cases arose out of disputes between railway companies and carriers in respect to "packed parcels," for which railway companies had charged carriers a higher rate than the public, "which it has been decided over and over again that these companies cannot be permitted to do." *Per* Willes, J., in *Piddington v. S. E. Ry. Co.*, 5 C. B. (N. S.) 111; 27 L. J. C. P. 295.

This section does not prevent a railway company from making a special through charge for goods carried over their railway in pursuance of a traffic agreement made with another company under sect. 87 of the same Act. *Hull, Barnsley, &c. Ry. Co. v. Yorkshire & Derbyshire Coal Co.*, 18 Q. B. D. 761.

See also *Att.-Gen. v. Birmingham & Derby Ry. Co.*, 2 Ry. Ca. 124.

If a railway company infringe the equality section, a customer paying the excess may recover it in an action against the company. *G. W. Ry. Co. v. Sutton*, L. R. 4 H. L. Ca. 226; 38 L. J. Ex. 177; *L. & N. W. Ry. Co. v. Evershed*, 3 App. Cas. 1029; 48 L. J. Q. B. 22.

In *Denaby, &c. Co. v. M. S. & L. Ry. Co.*, 11 A. C. 97; 55 L. J. Q. B. 181, it was decided that the above provision requiring equality of rates for carriage of goods "passing only over the same portion of the line of railway under the same circumstances" applies only to goods passing between the same points of departure and arrival and passing over no other part of the line. Mere inequality in the rate of charge when unequal distances are traversed does not constitute a preference inconsistent with the concluding words of the section, and therefore where the railway company in that case carried coals from a group of collieries situate at different points along their line, and charged all the collieries with one uniform set of rates in respect of such

carriage, and the owners of the colliery-lying nearest to the point of arrival brought an action for overcharges, it was held that the railway company had not infringed sect. 90. It was further decided, where goods are carried for different customers "over the same portion of the line of railway," and the only difference in the circumstances is that the goods carried for one customer are to be shipped to certain ports in order to develop a new trade, or open up new markets, and so to increase the tonnage carried, the railway company are not justified in making allowances to that customer, or in carrying for him at a lower rate than for the others.

But in the Irish case of *Independent Newspapers, Ltd. v. G. N. Ry. Co. of Ireland*, [1913] 2 I. R. 255, Gibson, J., was of opinion that the decision of the House of Lords in the *Denaby Case* was not intended to prevent sect. 90 of the Railways Clauses Act, 1845, from applying to traffic passing between the same places, but in the other direction, so long as both sets of traffic passed over the same portion of the railway.

In a case arising under the similar section (sect. 83) of the Railways Clauses Consolidation (Scotland) Act, 1845, where the sidings of two collieries joined the main line within the twelfth mile from T., but one was 415 yards nearer T. than the other, the Court of Session in Scotland held that the railway company were justified in charging for each incomplete mile as a whole mile in each case. *Yeats's Trustees v. G. & S. W. Ry. Co.*, 16 Sess. Ca. (4th Series) 535.

Where an excessive rate has been improperly charged, and the money has been paid without compulsion to the agents of the railway company with whom the contract was made, and such agents have settled their accounts with the contracting railway company, any action for the recovery of such overcharge must be brought against the contracting company and not against the agents, even though they themselves be a railway company and have retained part of the amount so paid as their share in a

Chap.  
XXIII.  
Art. 207.

through rate. *Taylor v. Met. Ry. Co.*, [1906] 2 K. B. 55; 75 L. J. K. B. 735.

In the same case a question was raised, but not decided, as to whether the above section (i.e., sect. 90 of the Railways Clauses Act, 1845) applied to the case of carriage at a through rate over the line of more than one railway company. As to this point, see *Hull, Barnsley, &c. Ry. Co. v. Yorkshire and Derbyshire Coal Co.*, 18 Q. B. D. 761; *N. Staffordshire Ry. Co. v. Edge*, *infra*.

In *N. Staffordshire Ry. Co. v. Edge*, [1920] A. C. 254; 89 L. J. K. B. 78, certain traders (but not the defendant) had commenced proceedings in the Railway Commission Court complaining of an alleged unreasonable increase of rates by the railway company. The parties came to a settlement upon the terms that the traders should be charged lower increased rates than those originally imposed. The company thereupon charged these traders the agreed lower rates, but charged the defendant the full amount of the increase for similar services between the same points. The House of Lords held that the higher rate charged to the defendant was an inequality within sect. 90 of the Railways Clauses Act, 1845, and that the company could not recover more than was charged to the other traders under the above compromise. The point as to whether sect. 90 applies to through rates was raised in this case before the Court of Appeal and the House of Lords, but was not considered as it had not been raised in the Court of first instance.

In the Irish case of *Independent Newspapers, Ltd. v. G. N. Ry. Co. of Ireland*, [1913] 2 I. R. 255, the railway company gave more favourable terms to newspaper traffic carried by passenger train from Belfast to Dublin than to similar traffic carried in like manner in the other direction from Dublin to Belfast. Gibson, J., held: (1) That sect. 90 of the Railways Clauses Act, 1845, applied, although there was no statutory charge for the above traffic, and the company were not bound to carry it by passenger train; (2) that the section applied to traffic carried

over the same portion of the line in opposite directions; and (3) that on the other facts of the case the respective traffics were not carried under the same circumstances, and that therefore the action failed.

Chap.  
XXIII.  
Art. 307.

208. In case of an alleged infringement of the "equality clause" (sect. 90) of the Railways Clauses Act, 1845, an action at law for the recovery of damages or overcharges can be maintained against a railway company, and the defence of competition with another railway company will not alone justify a preference in rates. *G. W. Ry. Co. v. Sutton*, 4 H. L. Ca. 226; 38 L. J. Ex. 177; *L. & N. W. Ry. Co. v. Evershed*, 3 A. C. 1029; 48 L. J. Q. B. 22.

The decision in *Evershed's Case* can now only be regarded as an authority in cases arising under the equality section (sect. 90 of the Railways Clauses Consolidation Act, 1845), and not with reference to cases of alleged undue preference within sect. 2 of the Traffic Act, 1854, in view of the later decisions in *Denaby, &c. Co. v. M. S. & L. Ry. Co.*, 11 A. C. 97; 55 L. J. Q. B. 81, and the other cases mentioned in Article 219, *post*. See Lord Herschell's judgment in *Pickering Phipps v. L. & N. W. Ry. Co.*, [1892] 2 Q. B. at p. 249.

209. Sect. 16 of the Regulation of Railways Act, 1868, enacts:—

"Where a railway company is authorized to build, or buy, or hire, and to use, maintain and work, or to enter into arrangements for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels, then and in



Chap.  
XXIII.  
Art. 209.

every such case tolls shall be at all times charged to all persons equally and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam-vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled or not being about to travel on any part thereof, or in favour of or against any person using the railway in consequence of his having used or been about to use, or his not having used or not being about to use, the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway."

See also sect. 30 of the Railways Clauses Act, 1863, the provisions of which are similar to the above section.

The above section does not apply to goods traffic. See *Branley v. S. E. Ry. Co.*, 12 C. B. N. S. 63; 31 L. J. C. P. 286. In the same case, which was decided in 1862 and arose out of an alleged infringement of the "equality clause" of the company's special Act, Erle, C. J., and Keating, J., held that a contract made in France relating to the carriage of goods by a vessel owned by an English railway company was governed by the *lex loci contractus*, and not by English law.

The section will not apply to two competing lines of vessels unless they are plying between the same towns or ports. *G. W. Ry. Co. v. Dublin & S. E. Ry. Co.*, 13 Ry. & Can. Ca. at p. 238.

As to what will constitute an agreement for the use, maintenance, and working of steam vessels, see *Greenock and Wemyss Bay Ry. v. Caledonian Ry. Co.* (No. 3), 2 Ry. & Can. Ca. 227.

Chap.  
XXIII.  
Art. 209.

As to the latter part of this section, which required the fare charged to be stated on the ticket, see *City of Dublin Steam Packet Co. v. L. & N. W. Ry. Co.*, 4 Ry. & Can. Ca. 10.

### UNDUE PREFERENCE.

**210.** Sect. 2 of the Railway and Canal Traffic Act, 1854, enacts:--

No railway company "shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic in any respect whatsoever, nor shall any such company subject any particular person or company to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Sect. 2 of the Railway and Canal Traffic Act, 1854, does not prohibit all preferences, but only undue or unreasonable preferences. What is an undue preference is a question of fact. *Pickering Phipps v. L. & N. W. Ry. Co.*, [1892] 2 Q. B. 229; 61 L. J. Q. B. 379; 8 Ry. & Can. Ca. 83.

There is no limit to the things which the Railway Commissioners may take into consideration in deciding a case of alleged undue preference, although any one of them standing by itself may be of the smallest weight in the scale. *Fairweather v. Corporation of York*, 11 Ry. & Can. Ca. at p. 211; and see sect. 27 (2) of the Railway and Canal Traffic Act, 1888, *post*, p. 378.

Chap.  
xxiii  
Art. 210.

Some of the cases decided prior to the passing of the Traffic Act, 1888, cannot now be regarded as useful authorities. See judgment of Wright, J., in *Charrington v. Mid. Ry. Co.*, 11 Ry. & Can. Ca. at p. 227.

Sect. 3 of the Traffic Act, 1854, empowered the Court of Common Pleas in England, and the Court of Session in Scotland, which are now, for the purposes of the Act, represented by the Railway Commissioners, to issue an injunction, or in Scotland an interdict, restraining the continued violation of the Act, and to inflict penalties in case of the same not being obeyed. As to Ireland, see p. 314, *ante*.

The term "undue preference" includes an undue preference, or an undue or unreasonable prejudice or disadvantage, in any respect, in favour of or against any person or particular class of persons, or any particular description of traffic; the term "merchandise" includes goods, cattle, live stock, and animals of all descriptions; the term "trader" includes any person sending, receiving, or desiring to send merchandise by railway or canal. See Railway and Canal Traffic Act, 1888, s. 55.

The word "traffic" includes not only passengers and their luggage, and goods, animals, and other things conveyed by any railway company, or railway and canal company, but also carriages, wagons, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company. The word "railway" includes every station of or belonging to such railway, used for the purposes of public traffic. Railway and Canal Traffic Act, 1854, s. 1.

The above provisions of sect. 2 of the Railway and Canal Traffic Act, 1854, are limited to the conveyance and transport of traffic on a railway or canal, and do not give jurisdiction to the Railway Commissioners to restrain a company owning two separate docks twenty miles apart and a line of railway connected with one of such docks (and thereby constituted a railway under sect. 3 of the Railway Companies Amendment Act, 1867), from charging

preferential dock dues, to the prejudice of a shipowner using the docks. *East and West India Dock Co. v. Shaw, Savill & Co.*, 39 Ch. D. 524; 57 L. J. Ch. 1038; 6 Ry. & Can. Ca. 94.

Chap.  
XXIII.  
Art. 319.

Sect. 2 of the Traffic Act, 1854, does not extend to acts done by a railway company in their capacity of landowners. Therefore where a railway company let land to various traders for use as coal wharves, and under a condition in the leases required that traffic consigned to the lessees should be forwarded by the route of company A. in preference to the route of a competing company B., it was held that the latter company were not unduly prejudiced, and that the above section was confined to the conduct of the company in their capacity of carriers. *L. & N. W. Ry. Co. v. S. E. and L. C. & D. Ry. Cos.*, 14 Ry. & Can. Ca. 165.

If a customer to whom credit has been allowed retains a balance due to a railway company as a set-off against a balance in dispute on another account, the company are justified in refusing such customer a further ledger account, without contravening sect. 2 of the Railway and Canal Traffic Act, 1854. *Skinningrove Iron Co. v. North Eastern Ry. Co.*, 5 Ry. & Can. Ca. 244.

In deciding whether a difference in charges or treatment amounts to an undue preference, regard will be had to the convenience of the public. *Lees v. L. & Y. Ry. Co.*, 1 Ry. & Can. Ca. 352. In this case the railway company were compelled, by the increase in traffic, to separate their mineral from goods traffic at O. station, and transferred the former to another station, retaining only at O. the mineral traffic of the M. Corporation, whose gasworks were close to such station. The Railway Commissioners having found that it was for the public benefit that the M. Corporation should receive their coal at O., and that the nature of their traffic enabled the railway company to deal with it with less inconvenience to their ordinary business than would be caused by dealing with the applicants' traffic at O., held that the preference to the M. Corporation was neither undue nor unreasonable.

Chap.  
XXIII.  
Art. 211.

211. Sect. 27 of the Railway and Canal Traffic Act, 1888, enacts:—

“(1) Whenever it is shown that any railway company charge one trader or class of traders, or the traders in any district, lower tolls, rates, or charges for the same or similar merchandise, or lower tolls, rates, or charges for the same or similar services, than they charge to other traders, or classes of traders, or to the traders in another district, or make any difference in treatment in respect of any such trader or traders, the burden of proving that such lower charge or difference in treatment does not amount to an undue preference shall lie on the railway company.”

In *Port of Manchester Warehouses, Ltd. v. Cheshire Lines Committee*, 17 Ry. & Can. Ca. at pp. 66 and 71, Lush, J., and Sir Lewis Coward, K.C., expressed the opinion that if a railway company quote a low preferential rate in their rate book and assert their right and intention to charge it, the Railway Commissioners have jurisdiction to interfere by injunction without waiting until the charge has actually been made: in other words, that it is not necessary to show that traffic has actually been carried at the rates complained of.

On the other hand, in *Chance and Hunt v. G. W. Ry. Co.*, 15 Ry. & Can. Ca. at p. 255, Sir James Woodhouse, in giving the judgment of the Commissioners, appears to have thought that it was not sufficient merely to show the existence of a “paper rate,” i.e., a rate entered in the rate book, and that it was necessary to prove that the applicants were in fact prejudiced by reason of similar traffic having been carried for a competitor.

As to when an injunction will be issued, see also *Macfarlane v. N. B. Ry. Co.*, 4 Ry. & Can. Ca. at p. 283.

**SIMILAR MERCHANDISE.**—In *Chance and Hunt v. G. W. Ry. Co.*, 15 Ry. & Can. Ca. 241, the Railway Commissioners having

ordered that certain siding rebates should be allowed the applicants if similar traffic passed to or from certain stations, the Commissioners subsequently held (see p. 259 of the Report) that in deciding whether such similar traffic had passed, regard might be had to the applicants' own traffic.

In the same case the Registrar of the Railway Commission decided (p. 268 of the Report) in an enquiry as to damages (1) that consignments of traffic sent by the applicants after the date of the order embodying the judgment could not be accepted as evidence of similar traffic; (2) that it was not sufficient to show that traffic in the same class of the general classification had passed; and (3) that regard must be had as to whether traffic was inwards or outwards. Upon reference back to the Commissioners, the Registrar's decision on these three points was upheld. See 15 Ry. & Can. Ca. at p. 275.

Where two different qualities of any article (*e.g.*, coal) are sufficiently alike as to be substantially and commercially of the same description for the purpose for which they are used, it is an undue preference to the producer of the superior quality to carry the inferior quality at lower rates than those charged for the superior quality. *Nitshill, &c. Co. v. Cal. Ry. Co.*, 2 Ry. & Can. Ca. 39.

The fact that a complainant manufactures the goods carried for him into an article which may compete with the goods carried for the person to whom the undue preference is alleged to be given is not one which a railway company is bound to take into consideration in fixing charges. *Lancashire Patent Fuel Co. v. L. & N. W. Ry. Co.*, 12 Ry. & Can. Ca. 77.

**DIFFERENCE IN TREATMENT.**—An applicant must show that a difference of treatment results in a difference in charges. He must show that the difference in treatment *primâ facie* gives an advantage to his competitor, and some disadvantage to himself before the *onus* is cast upon the railway company. *Lever Brothers v. Mid. Ry. Co.*, 13 Ry. & Can. Ca. 301; *Olympia Oil Co. v. N. E. Ry. Co.*, 15 Ry. & Can. Ca. at p. 173.

Chap.  
XXIII.  
Art. 811.

In *Lever Brothers v. Mid. Ry. Co.*, *supra*, the railway company received from the Cheshire Lines Committee the applicants' goods for carriage over their line at through rates based on actual gross weight, while at Leeds they received direct from certain trade competitors of the applicants similar goods at rates calculated on computed weight. No evidence was given as to the rates charged to the applicants or to their competitors, nor as to the proportion received by the defendant company out of the through rates on the applicants' traffic. The Court of Appeal (Moulton, L. J., dissenting) held that the mere difference in treatment did not constitute a *prima facie* case of undue preference, and also that as the railway company did not receive goods from the applicants at Leeds, there was nothing to show that the latter had been refused similar advantages to those given to their competitors.

An inequality in charge is not conclusive evidence of undue preference. It raises a presumption in favour of the applicant, which may, however, be rebutted. *Holwell Iron Co. v. Mid. Ry. Co.*, 13 Ry. & Can. Ca. 244; 14 Ry. & Can. Ca. 1.

**212.** Sect. 27 (2) of the Railway and Canal Traffic Act, 1888, enacts:—

“In deciding whether a lower charge or difference in treatment does or does not amount to an undue preference, the Court having jurisdiction in the matter, or the Commissioners, as the case may be, may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge or difference in treatment is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made, and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant: provided that no railway company

shall make, nor shall the Court, or the Commissioners, sanction any difference in the tolls, rates, or charges made for, or any difference in the treatment of, home and foreign merchandise, in respect of the same or similar services.”

Chap.  
XXIII.  
Art. 212.

The fact that the effect of lower rates is to give a locality a source of supply which would otherwise not be available, and to bring from a distance goods which otherwise would not come into the market at all, may, and in the case of food will, justify a preference in charges and treatment. *Liverpool Corn Traders' Association v. G. W. Ry. Co.*, 8 Ry. & Can. Ca. 114; *Pickering Phipps v. L. & N. W. Ry. Co.*, [1892] 2 Q. B. 229; 61 L. J. Q. B. 379; 8 Ry. & Can. Ca. 83.

“The public” includes any considerable portion of the population. *Castle Steam Trawlers v. G. W. Ry. Co.*, 13 Ry. & Can. Ca. 145.

The meaning of the provision in sect. 27 (2) of the Act of 1888 as to the retention of lower rates in the public interest was first raised in *Liverpool Corn Traders' Association v. L. & N. W. Ry. Co.*, [1891] 1 Q. B. 120; 60 L. J. Q. B. 76; 7 Ry. & Can. Ca. 125. In that case the applicants complained that the rates charged by the respondents for the carriage of grain and flour from C. to B. were lower than those for the same merchandise from L. to B., although the distance between C. and B. was greater than that between L. and B. The Railway Commissioners held that the interests of the public did not require the maintenance of the low rates from C. to B., and that the respondents must not prejudice the applicants by the undue preference complained of. This decision is, however, of small importance in view of the remarks of Wills, J., when referring to it in the case of *Liverpool*



Chap.  
XXIII.  
Art. 212.

*Corn Traders' Association v. G. W. Ry. Co.*, *post*, from which it would appear that if the full facts had been before the Commissioners, their decision might have been different.

In that case, *i.e.*, *Liverpool Corn Traders' Association v. G. W. Ry. Co.*, 8 Ry. & Can. Ca. 114, the facts were analogous to those in the previous case of the same *Association v. L. & N. W. Ry. Co.*, *ante*, viz., a lower rate was charged for the carriage of corn, flour, &c. from the Severn ports than from Birkenhead to Birmingham, although the mileage was, with one exception, greater from such ports than from Birkenhead.

The Railway Commissioners (Sir F. Peel dissenting) held that the preference was justified under sect. 27 (2) of the Act of 1888, inasmuch as the following facts were proved, viz., that the Liverpool traders were able, notwithstanding the difference of rates, to compete effectively in the Midland markets with the traders who used the Western ports; that they occupied upon the whole, and taking the whole year round, in those markets a position of substantial superiority over their Western competitors; and, further, that the rates from the Western ports to the Midland markets had been fixed with reference to an effective competition maintained by the river and canal routes between the same termini. This decision of the Commissioners was subsequently confirmed by the Court of Appeal. See 8 Ry. & Can. Ca. p. 141.

The point again arose in the later case of *Pickering Phipps v. L. & N. W. Ry. Co.*, [1892] 2 Q. B. 229; 61 L. J. Q. B. 379; 8 Ry. & Can. Ca. 83. In that case Lord Herschell, sitting in the Court of Appeal, said at p. 243 of the L. R.:—"When it (sect. 27 (2) of the Act of 1888) speaks of the difference in treatment necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made, I cannot suppose that the legislature, by using that language (though, perhaps, that would be the more grammatical and natural construction), had in view that the motive of the railway company or that the necessity which was to be yielded to by the railway company, was to be the public good. Of course a railway company endeavours to secure

Chap.  
XXIII.  
Art. 212.

the traffic for its own advantage. That is the motive which operates upon the railway company. Naturally enough, they want to secure all the traffic they can in order to do the best trade they can; but I think that the legislature has here pointed out that in considering a question of this sort you are not only to consider the legitimate desire of the railway company to secure traffic, but that you are to consider whether it is in the interests of the public that they should secure that traffic rather than abandon it or not attempt to secure it."

A trader made a complaint of undue preference on the ground that a railway company carried coal for shipment at a lower rate by about 33 per cent. than they carried over the same parts of their line similar coal for him to be used in his works for manufacturing purposes. There was no evidence that the rates charged to the complainant, which were charged to all traders in the district, were unreasonable, except in so far as they were more than the shipment rates, and the railway company having shown that they could not raise their shipment rates partly by reason of agreements by which they were bound, partly by reason of competition with another railway company, and partly by reason of the fact that the traffic would not stand increased rates, it was held that the low shipment rates were necessary to secure the traffic in the public interest, and that the complaint of undue preference failed. *Spillers and Bakers, Ltd. v. Taff Vale Ry. Co.*, 12 Ry. & Can. Ca. 70.

In considering a complaint as to an alleged undue preference the Railway Commissioners may take into consideration in pursuance of sect. 27 (2) of the Railway and Canal Traffic Act, 1888, the fact that, but for the special terms granted to the traders in question, the business carried on by them might have left a particular district and all other circumstances affecting the case, although any one of them standing by itself might be of the smallest weight. *Fairweather & Co. and others v. Corporation of York*, 11 Ry. & Can. Ca. 201.

In *Castle Steam Trawlers v. G. W. Ry. Co.*, 13 Ry. & Can.

Chap.  
XXIII.  
Art. 212.

Ca. 145, it was held that certain preferential rates for the carriage of fish from Milford Haven to London, Birmingham, and other populous centres were justified on the ground that it was in the public interest that as many avenues of approach to those markets as possible should be kept open, and also that the fishing industry at Milford should be enabled to thrive in the interest of the community at that place.

On the other hand, in *Anglo-American Oil Co. v. Cal. Ry. Co.*, 16 Ry. & Can. Ca. 133, the Railway Commissioners, sitting in Scotland, held that preferential rates in favour of oil manufactured in Scotland over imported foreign oil were not justified in the public interest by reason of their assisting to establish and protect new industries.

In *Port of Manchester Warehouses, Ltd. v. Cheshire Lines Committee*, 17 Ry. & Can. Ca. 54, the railway company quoted a certain low preferential rate for cigarettes which had been brought to Manchester over the ship canal and stored in the canal company's warehouse within the dock area, whereas they charged a higher rate, *i.e.*, the ordinary Manchester rate, for similar goods which also had travelled over the canal, but had been stored in the applicants' warehouse outside, but near to the dock area. The lower rate was based on corresponding rates from Liverpool which were regulated by sea competition. The Commissioners by a majority held that the preference was justified on the ground (a) that a low rate based on the Liverpool rates was necessary in order to induce the traffic to be consigned over the canal and thus keep open that route in the public interest, and (b) that inasmuch as the traffic using the applicants' warehouse had been taken out of the docks it should be charged at the Manchester town rate. In this case the Commissioners extended the meaning of the expression in sect. 27 (2) of the above Act of 1888, "securing in the interests of the public" so as to make it applicable to a means of communication other than the railway of the defendant company, namely, the use of the ship canal.

## FOREIGN MERCHANDISE NOT TO BE PREFERRED.

This important proviso to sub-sect. 2 of sect. 27 of the Act of 1888, which prohibits any difference in the treatment of home and foreign merchandise, was considered by the Railway Commissioners in *Mansion House Association v. L. & S. W. Ry. Co.*, [1895] 1 Q. B. 927; 64 L. J. Q. B. 529; 9 Ry. & Can. Ca. 20. The interpretation then placed upon the proviso was that it does not prohibit all inequalities in rates as between home and foreign merchandise, and that if the railway company can prove facts which would justify a difference in rates if the goods in question were in both cases home goods, the company are not debarred from relying on those facts as an answer to justify such difference merely because the goods which receive the benefit of the difference are of foreign origin. The difference in treatment referred to in the proviso is one which the foreign goods obtain solely owing to their foreign origin, and which is, therefore, of necessity not open to the home goods. Therefore a difference founded on a long distance through rate from a foreign country with a proportionately lower mileage rate over the British railway part of the journey, or possibly a difference due to the fact that ocean steamship competition exists, cannot be justified because in each case the difference is due to circumstances which are to be found in the case of the foreign goods, but not in the case of the home goods.

Chap.  
XXIII.  
Art. 318.

The fact that foreign produce is packed in such a way as to enable a larger quantity to be loaded in a railway truck than similar goods consigned from the Channel Islands will justify a preferential rate. *Guernsey Mutual Transport Co. v. L. B. & S. C. Ry. Co.*, 13 Ry. & Can. Ca. 153.

In the same case a through sea and land preferential rate on foreign vegetables was apportioned in such a way as to allocate to a French company which performed the carriage by sea a low and probably unremunerative freight, but the Commissioners held this did not afford any ground for relief to another shipping

**Chap.**  
**XXIII.**  
**Art. 212.**

company which was engaged in the carriage of similar traffic from the Channel Islands.

See also *Joseph Rank, Ltd. v. G. E. Ry. Co.*, 13 Ry. & Can. Ca. 131.

**213.** Sect. 27 (3) of the Railway and Canal Traffic Act, 1888, enacts:—

“The Court or the Commissioners shall have power to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway.”

The above sub-section presumably refers to the various collateral services rendered by railway companies, such as warehousing, collection and delivery, &c., and not to conveyance charges.

The principle of cumulative conveyance rates, whereby the mileage charge decreased as the length of the transit increased, was adopted by the Rates and Charges Orders, 1891—2, and has been retained in the schedules of standard charges submitted to the Rates Tribunal by the four group railway companies in accordance with sect. 30 of the Railways Act, 1921.

In *Foreman v. G. E. Ry. Co.*, 2 Ry. & Can. Ca. 202 (decided before the Rates and Charges Orders, 1891—2), the Railway Commissioners decided that a reduction of rates in proportion to distance was justified if the principle on which the scale was graduated was a fair consideration of the cost to the company of carrying goods for the different distances.

In all cases of alleged undue preference the principle to be adopted is, that similar charges ought to be made for similar services, and, therefore, where the same actual rate is charged between a common point and two towns, although the mileage is

Chap.  
XXIII.  
Art. 219.

greater to one town than to the other, there is a *prima facie* case of undue preference, and in order to justify the same it must be shown that if the same mileage rate was charged in both cases— (1) some injustice would be done to the railway company, or (2) the existing rates and traffic for the longer distance as well as the public interest would be interfered with, or (3) the longer distance justified the lower mileage rate. *Timm v. N. E. Ry. Co. and others*, 11 Ry. & Can. Ca. 214.

The fact that the percentage which a reduced charged rate bears to the maximum authorised rate is greater in one case than another will not support a complaint of undue preference. *Chance and Hunt v. G. W. Ry. Co.*, 15 Ry. & Can. Ca. at p. 254.

Sect. 40 (5) of the Railways Act enacts that for the purposes of determining any question of an alleged undue or unreasonable preference or advantage, the Railway and Canal Commission shall not have regard to the separate component parts of any rate as shown in the rate book or as determined by that section, but shall, unless in any case in which an application has been made for the purpose it is proved to the satisfaction of the Commission that a consideration of the component parts of the rate would be fair and reasonable, determine the question in reference to the total rate for carriage.

**214.** Sect. 28 of the Railway and Canal Traffic Act, 1888, enacts:—

“The provisions of section 2 of the Railway and Canal Traffic Act, 1854, . . . and of any enactments amending and extending those enactments, shall apply to traffic by sea in any vessels belonging to or chartered or worked by any railway company, or in which any railway company procures merchandise to be carried, in the same manner and to the like extent as they apply to the land traffic of a railway company.”

Chap.  
XXIII.  
Art. 214.

A railway company do not show an undue preference to a steamboat company by making through booking arrangements, and by running their trains in connection with the vessels of such steamboat company to the exclusion of a competing steamboat company. *Southsea, &c. Steam Ferry Co. v. L. & S. W. and L. B. & S. C. Ry. Cos.*, 2 Ry. & Can. Ca. 341.

A preferential through land and sea rate can be justified by showing that without it a port with infrequent sailings and a long sea route would be unable to exist. The burden of proof is on those interested in maintaining the preference. *Gt. S. & W. Ry. Co. v. Dublin & S. E. Ry. Co.*, 13 Ry. & Can. Ca. 176 at p. 195.

But this rule will not be extended in the absence of statutory provision or agreement so as to compensate a carrier by sea who is in competition with railway owned vessels for any inferiority in his route or service. The result would be to stereotype rates at a level higher than those of the worst competitor. *Dublin & Manchester Steamship Co. v. L. & N. W. Ry. Co.*, 15 Ry. & Can. Ca. 88 at pp. 96 and 101.

A through sea and land rate *viâ* Port A. by a railway company's vessels and railway cannot be compared with a local railway rate from Port B. used by a sea carrier in competition with the company's vessels. Therefore, where a railway company charged a higher mileage railway rate for goods consigned *viâ* a competing sea route than they charged for goods consigned by their own vessels *viâ* a different route, the Railway Commissioners held that there was no case of undue preference. *Dublin & Manchester Steamship Co. v. L. & N. W. Ry. Co.*, 15 Ry. & Can. Ca. 88.

**215.** Sect. 29 of the Railway and Canal Traffic Act, 1888, enacts:—

“(1) Notwithstanding any provision in any general or special Act, it shall be lawful for any railway com-

Chap.  
XXIII.  
Art. 215.

pany, for the purpose of fixing the rates to be charged for the carriage of merchandise to and from any place on their railway, to group together any number of places in the same district, situated at various distances from any point of destination or departure of merchandise, and to charge a uniform rate or uniform rates of carriage for merchandise to and from all places comprised in the group from and to any point of destination or departure. (2) Provided that the distances shall not be unreasonable, and that the group rates charged and the places grouped together shall not be such as to create an undue preference. (3) Where any group rate exists or is proposed, and in any case where there is a doubt whether any rates charged or proposed to be charged by a railway company may not be a contravention of section 2 of the Railway and Canal Traffic Act, 1854, and any Acts amending the same, the railway company may, upon giving notice in the prescribed manner, apply to the Commissioners, and the Commissioners may, after hearing the parties interested and any of the authorities mentioned in section 7 of this Act, determine whether such group rate or any rate charged or proposed to be charged as aforesaid does or does not create an undue preference. Any persons aggrieved, and any of the authorities mentioned in section 7 of this Act, may, at any time after the making of any order under this section, apply to the Commissioners to vary or rescind the order, and the Commissioners, after hearing all parties who are interested, may make an order accordingly."

This section is merely a statutory recognition of what has long



Chap.  
XXIII.  
Art. 218

been the law. For the convenience of their traffic, railway companies are obliged to divide their area into districts, with distinct rates and arrangements applicable to each; yet if such districts were arranged for the convenience of the company and not to give any preference or partiality, the Court of Common Pleas would not interfere. *Ransome v. Eastern Counties Ry. Co.*, 4 C. B. (N. S.) 135; 27 L. J. C. P. 166; *Same v. Same*, 8 C. B. (N. S.) 709; 29 L. J. C. P. 329.

In *Denaby, &c. Co. v. M. S. & L. Ry. Co.*, 3 Ry. & Can. Ca. 426, which was decided prior to the passing of the Traffic Act, 1888, a railway company charged a uniform rate for traffic from an entire district or coalfield; the collieries were grouped because they all worked the same bed of coal, and the grouping applied compulsorily to a coalfield extending over twenty miles, and covering an area in which some of the collieries were that distance apart. Collieries in one part of such district paid no higher rate than collieries in another for their coal traffic to any particular station, all alike paying one uniform rate, irrespective of any difference in their actual distances from such station. Upon complaint by a colliery company in the district that the effect of the uniform rate was to subject their coal to a higher charge per ton per mile than coal from other collieries, and to deprive them of the advantage of their greater proximity to places to which the coal was sent, it was proved that the applicants were charged the same rate for conveyance of their coal to a particular station as was charged for coal sent from more distant collieries in the same district, although the additional distance to be run was ten or fifteen miles. It was held that the grouping system, as it affected the applicants, subjected them to an undue and unreasonable prejudice and disadvantage, and that the railway company ought to carry the applicants' coal at a rate per ton per mile not exceeding that charged to other coal owners of the district.

Where a railway company have districts for through rates extending over long distances, they are not bound to vary the rates in respect of slight differences of distance. *Lloyd v. Northampton & Banbury Ry. Co.*, 3 Ry. & Can. Ca. 259.

The measure of undue preference where there is a group rate which is justified on grounds of commercial convenience is different from that applicable where no such rate exists. *North Lonsdale Iron and Steel Co., Ltd. v. Furness Ry. Co.*, 60 L. J. Q. B. 419; 7 Ry. & Can. Ca. 146.

In that case Wills, J., said: "If the rates can be defended on the ground that they do not create an undue preference without grouping, this section (sect. 29 of the Railway and Canal Traffic Act, 1888) would be inoperative, and therefore, wherever there is a grouping which is, on grounds of general convenience, to be defended a more liberal allowance must be made to the companies in dealing with rates than would be permitted to them except for grouping."

In *Davis & Sons v. Taff Vale Ry. Co.*, [1895] A. C. 542; 64 L. J. Q. B. 488, Lord Watson expressed the opinion that the powers given by sect. 29 of the Railway and Canal Traffic Act, 1888, to fix group rates, notwithstanding the provisions of any general or special Act, have no effect upon the rate chargeable, under express statutory provisions, for the conveyance of traffic to any terminus which is not included in the group.

There is nothing in the above section to prevent a railway company from grouping *de novo*, or dissolving a group, or taking one place out of it in the sense of leaving the others in and not putting that one in. Groups are not rigid and irrevocable. *Millon, &c. Iron Co., Ltd. v. Furness and other Ry. Cos.*, 12 Ry. & Can. Ca. 1.

The T. V. Railway Company made an *ex parte* application to the Railway Commissioners, under sub-sect. 3 of the above section, whereby they sought to be authorised to charge a lower mileage rate in respect of traffic from a certain colliery than was charged for similar traffic over the rest of their system on the ground that the colliery was also served by the R. Railway Company, whose uniform mileage rate was lower than that of the applicants. There were provisions in one of the applicants' special Acts pro-

Chap.  
XXIII.  
Art. 215.

hibiting the granting of undue advantages to the traffic of any one of the valleys served by the applicants' railway. The Commissioners dismissed the application in the absence of any evidence to show that any public interest would be served by the proposed reduction in favour of the colliery company. *In re Taff Vale Ry. Co.*, 11 Ry. & Can. Ca. 89.

In the same case it was held that in the exercise of the jurisdiction under sub-sect. 3 of the above section, no order should be made unless all the interests concerned were before the Court, and on the fullest possible evidence.

In *Abram Coal Co. v. G. C. Ry. Co.*, 12 Ry. & Can. Ca. at p. 135, Bigham, J., stated that: "Probably this Court (*i.e.*, the Railway Commissioners) would, in a proper case, require the railway company, if before it, to have recourse to grouping, if by so doing they could remove a preference without undue injury to themselves, and without undue injury to third parties."

**216.** Sect. 30 of the Railway and Canal Traffic Act, 1888, enacts:—

"Any port or harbour authority or dock company which shall have reason to believe that any railway company is by its rates or otherwise placing their port, harbour, or dock at an undue disadvantage as compared with any other port, harbour, or dock to or from which traffic is or may be carried by means of the lines of the said railway company, either alone or in conjunction with those of other railway companies, may make complaint thereof to the Commissioners, who shall have the like jurisdiction to hear and determine the subject-matter of such complaint as they have to hear and determine a complaint of a contravention of sect. 2 of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts."

Chap.  
XXIII.  
Art. 218.

By sect. 7 of this Act provision is made for complaints by public and local authorities, associations of traders, and chambers of commerce upon complying with certain conditions.

Where a railway company are owners of two or more routes serving different ports it is not an undue preference of one port over another for such company to forward by one only of such alternative routes all the traffic not consigned by a particular route so long as they leave traders free to choose whichever route they prefer, nor is it necessarily an undue preference to arrange for a more extensive system of through rates and other facilities by one route than by another. But if one of their customers prefers to use the route not favoured by the railway company, and consigns his traffic accordingly, the railway company are bound not to subject such traffic to an undue disadvantage. *Londonderry, &c. Commissioners v. G. N. Ry. Co. (Ireland) and others*, 5 Ry. & Can. Ca. 282. See also as to unduly preferring one of two competing routes, *Ayrshire, &c. Ry. Co. v. G. & S. W. Ry. Co., &c. Joint Committee*, 6 Ry. & Can. Ca. 26.

The G. W. Ry. Co. had certain rates in force between certain of their inland stations and their stations at M. Dock and S. Harbour. These rates were lower than the through rates for similar traffic between the same inland stations and C. and S. P. Harbour stations on the L. & S. W. Ry. Traffic for the last two stations passed first over the G. W. line and then on to the L. & S. W. line. It was held that the G. W. Co. alone had the power to give an undue preference to one harbour over another, as that company alone carried either wholly or jointly with the L. & S. W. Co. between the said inland stations and all four ports, and that if the L. & S. W. Co. so fixed the charge for their part of the through rates as to make them, when added to the G. W. Co.'s charge, into higher rates than those charged to and from the ports served by the G. W. Co., they (the L. & S. W. Co.) were showing no preference as regards the traffic in question, as they had nothing to do with the traffic to the G. W. ports. *Plymouth Incorporated Chamber of Commerce* (who also represented the various Harbour

Comp.  
XXIII.  
Art. 916.

Commissioners, &c.) v. *G. W. Ry. Co. and L. & S. W. Ry. Co.*; *Bernard & Alger v. The Same*, 9 Ry. & Can. Ca. 72.

Where a special Act provided that the *Gt. S. & W. Ry. Co.* should not, by their rates or fares, place the port of Dublin at an undue disadvantage, it was held that a system of through booking and rates *via* Dublin, based on the principle of equal rates where there were reasonable competitive routes, must be put into force by the railway company, and that in the case of all through rates in which the distance by the longer route did not exceed the distance by the shortest route by more than 50 per cent. the longer route was a reasonable alternative route. *Dublin Port and Docks Board v. Gt. S. & W. Ry. Co.*, 13 Ry. & Can. Ca. 209.

**217.** Sect. 12 of the Railway and Canal Traffic Act, 1888, enacts:—

Where the Railway Commissioners “have jurisdiction to hear and determine any matter, they may, in addition to, or in substitution for, any other relief, award to any complaining party who is aggrieved such damages as they find him to have sustained, and such award of damages shall be in complete satisfaction of any claim for damages, including repayment of overcharges which, but for the Act, such party would have had by reason of the matter of complaint. Provided that such damages shall not be awarded unless complaint has been made to the Commissioners within one year from the discovery by the party aggrieved of the matter complained of.

“The Commissioners may ascertain the amount of such damages, either by trial before themselves or by directing an inquiry to be taken before one or more of themselves, or before some officer of their court.”

Sect. 13 of the same Act enacts:-

Chap.  
XXIII.  
Art. 217.

“In cases of complaint of undue preference, no damages shall be awarded if the Commissioners shall find that the rates complained of have, for the period during which such rates have been in operation, been duly published in the rate books of the railway company kept at their stations in accordance *with sect. 14 of the Regulation of Railways Act, 1873*, as amended by this Act, unless and until the party complaining shall have given written notice to the railway company requiring them to abstain from or remedy the matter of complaint, and the railway company shall have failed, within a reasonable time, to comply with such requirements in such a manner as the Commissioners shall think reasonable.”

The proper remedy for a trader claiming damages from a railway company in respect of an alleged undue preference under sect. 2 of the Railway and Canal Traffic Act, 1854, is, by application to the Railway Commissioners under sect. 12 of the above Act of 1888, subject to the provisions of sect. 13 of the same Act. *M. S. & L. Ry. Co. v. Denaby, &c. Co.*, 14 Q.B.D. 209; 54 L.J.Q.B. 103; 4 Ry. & Can. Ca. 437, reported, on appeal to the House of Lords, in 11 A.C. 97; 55 L.J.Q.B. 181, under the title of *Denaby, &c. Co. v. M. S. & L. Ry. Co.*; *L. & Y. Ry. Co. v. Greenwood*, 21 Q.B.D. 215; 58 L.J.Q.B. 16; *Rhymney Ry. Co. v. Rhymney Iron Co.*, 25 Q.B.D. 146; 59 L.J.Q.B. 414; *Pickering Phipps v. L. & N. W. Ry. Co.*, [1892] 2 Q.B. 229; 61 L.J.Q.B. 379; 8 Ry. & Can. Ca. 83.

Chap.  
XXIII.  
Art. 217.

As from "the appointed day" sect. 14 of the Regulation of Railways Act, 1873, will be repealed (see sect. 86 and Ninth Schedule, Part II. of the Railways Act, 1921), and will be replaced by sect. 54 (3) of the latter Act. See *ante*, p. 268.

It is to be observed that the remedy by action for damages which is available to a trader who alleges an infringement of the "equality clause" of the Railways Clauses Act, 1845 (*ante*, p. 371), is not open to a person complaining of an undue preference under sect. 2 of the Traffic Act, 1854.

Prior to the Traffic Act, 1888, which came into force on January 1st, 1889, a trader could not recover overcharges or damages in respect of an undue preference within sect. 2 of the Traffic Act, 1854.

The Court of Appeal decided in *M. S. & L. Ry. Co. v. Denaby Main Colliery Co.*, 14 Q. B. D. 209; 54 L. J. Q. B. 103, that no action for the recovery of overcharges or damages would lie in respect of any breach of the provisions of sect. 2 of the Act of 1854. In the House of Lords, Lord Blackburn took the same view as the Court of Appeal, and the other learned Lords did not dissent. See *Denaby, &c. Co. v. M. S. & L. Ry. Co.*, 11 A. C. 97; 55 L. J. Q. B. 181.

The Courts in Scotland had arrived at a similar decision in the earlier case of *Murray v. G. & S. W. Ry. Co.*, 11 Sess. Ca. 4th Ser. 205. See also *Cal. Ry. Co. v. Cross*, 16 Sess. Ca. 4th Ser. 584.

In *L. & Y. Ry. Co. v. Greenwood*, 21 Q. B. D. 215; 58 L. J. Q. B. 16, Cave, J., held, on the principle established by the *Denaby Case*, that it was no defence to an action brought by a railway company to recover charges for the carriage of goods that the charges sued for were unreasonable so as to give an undue preference to other persons, or to subject the defendant to undue prejudice or disadvantage, within sect. 2 of the Traffic Act, 1854, and that the defendant could not in such an action set off, or recover by counterclaim, over-payments in respect of previous charges which were unreasonable within that section. The

Chap.  
XXIII.  
Art. 317.

learned judge in the above case referred to the opinion expressed by Lord Halsbury, L. C., in the *Denaby Case*, *ante*, that an action for extortion might possibly lie after the Railway Commissioners had found that there had been a breach of sect. 2 of the Traffic Act, 1854.

This latter point was subsequently decided in *Rhymney Ry. Co. v. Rhymney Iron Co.*, 25 Q. B. D. 146; 59 L. J. Q. B. 414. There the Railway Commissioners had decided that the railway company were giving an undue preference over the defendant company to another trading company, but the Court of Appeal held that the defendants in one action, brought against them by the railway company, were not entitled to set off or counterclaim sums representing the excess over the rates paid by the other company.

A railway company inserted on the fly-leaf at the beginning of their rate books a printed slip stating that "rebates are allowed to coal merchants from certain rates to stations in the eastern counties and upon certain conditions, the particulars of which may be obtained on application to the general manager." It was held by the Railway Commissioners that this notice was not a sufficient publication of a lower rate to relieve the railway company from liability under the above sect. 13 of the Act of 1888. *Dalry v. Mid. Ry. Co.*, 10 Ry. & Can. Ca. 303.

A letter in which the applicant, after referring to an interview with the railway company's official, said: "I am bound to say that I am not content to pay the present quoted rate," was held to be a sufficient notice within sect. 13 of the Act of 1888. *Sheffield Coal Co., Ltd. v. L. & N.W. Ry. Co. and others*, 10 Ry. & Can. Ca. 230.

Where a railway company are granting a rebate in accordance with an agreement with a firm of traders, a notice inserted in their books that "Rebates are allowed to coal merchants off their coal traffic accounts in certain cases and upon certain conditions, where the annual tonnage carried exceeds 25,000 tons. Particulars of the conditions qualifying merchants to this allowance



Chap.  
XXIII.  
Art. 217.

may be obtained on application to the general manager," is not sufficient to disclose the existence of such rebate in accordance with sect. 13 of the Act of 1888. *Charrington & Co. v. Mid. Ry. Co.*, 11 Ry. & Can. Ca. 222.

The Statute of Limitation (21 Jac. I. c. 16, s. 3) applies to claims for damages under the above sections. Therefore, in the absence of fraud, the time for which the allowance is to be carried back is six years. *Ibid.*

The period of one year prescribed by sect. 12 of the Traffic Act, 1888, will run against an applicant unless the railway company expressly or impliedly agree to waive the statute. It is not sufficient for a trader with knowledge of the facts to pay the full rates complained of with a covering letter stating that the payment is without prejudice to his rights. *Holwell Iron Co. v. Mid. Ry. Co.*, 13 Ry. & Can. Ca. 244 at p. 257.

MEASURE OF DAMAGES.—In *Chance and Hunt v. G. W. Ry. Co.*, 15 Ry. & Can. Ca. 241, at p. 265, the Railway Commissioners having been asked to give directions as to the proper measure of damages in cases of undue preference, were of opinion that while it was difficult to lay down any abstract rule, *primâ facie* the measure should be the difference between the respective charges, provided that the actual loss sustained arose directly from the undue preference, the onus being on the railway company to show that the actual loss is less than such difference.

This direction, however, must be read as subject to the subsequent ruling of Bankes, J., in the same case (see p. 279 of the Report), where he held that the measure of damages was not the difference in the respective charges irrespective of the actual quantities carried, and that there must be definite proof on this point. It was also held (a) that in the absence of an express order damages should be assessed up to the date of the application only, and (b) that no regard should be had to the distances over which the respective traffics had been conveyed.

The proviso in sect. 12 of the Traffic Act, 1888, that damages

shall not be awarded unless complaint is made within one year from discovery of the matter complained of applies to a claim for damages in respect of undue preference. *Anglo-American Oil Co. v. Cal. Ry. Co.*, 16 Ry. & Can. Ca. 133.

Chap.  
XXIII.  
Art. 217.

An order requiring a railway company to discontinue an undue preference takes effect from the date of the order, and not from that of the application. *Ibid.*

218. Any trader who is directly prejudiced by the giving of an alleged undue preference, may complain of the same before the Railway Commissioners. *Spillers & Bakers, Ltd. v. Taff Vale Ry. Co.*, 12 Ry. & Can. Ca. 70; *Forwood v. G. N. Ry. Co.*, 12 Ry. & Can. Ca. 89; *Anglo-American Oil Co. v. Cal. Ry. Co.*, 16 Ry. & Can. Ca. 133. See also *Cowan v. N. B. Ry. Co.* (No. 3), 11 Ry. & Can. Ca. 271.

In *Spillers & Bakers, Ltd. v. Taff Vale Ry. Co.*, *supra*, the question arose as to whether a trader who did not directly pay the rate complained of could make an application as to an alleged undue preference. Wright, J., without deciding the point, thought that "if in substance the charge is made so as to affect the interest of the trader, it may be that it is not essential legally that there should be any direct charge made to the trader."

A somewhat similar point arose in *Forwood v. G. N. Ry. Co.*, *supra*, in which the applicants, who were wharf-owners, complained that the railway company had allowed to a dock company the sum of 3s. 9d. per ton for dues and for services rendered by the dock company between the dock entrance and the ship's side, in respect of merchandise carried by the railway company for shipment from the docks, at a collected and delivered rate of 25s. per ton (which rate included, as between the consignee and the railway company, delivery at the ship's side), and had refused to make any allowance to the applicants for similar services rendered by

Chap.  
XXIII.  
Art. 218.

them in respect of similar merchandise carried by the railway company at the same rate for shipment from their wharf. It was held that the applicants were prejudiced, and that, although having no direct interest in the goods carried by the railway company, they had sufficient interests as competing wharf-owners to entitle them to apply to the Court for relief, and that the railway company had unduly preferred the dock company.

A trader who is interested in a given class of traffic as a merchant is entitled to apply to the Railway Commissioners in respect of an alleged undue preference afforded to a manufacturer of similar goods. *Anglo-American Oil Co. v. Cal. Ry. Co.*, 16 Ry. & Can. Ca. 133.

In *Hozier v. Cal. Ry. Co.*, 1 Ry. & Can. Ca. 27, decided in 1855, the Court of Session in Scotland held that in a case of alleged undue preference, within sect. 2 of the Traffic Act, 1854, the parties must be in competition in order to give one an interest to complain. But in that case the applicant did not allege that he had suffered any disadvantage.

In *Spillers & Bakers, Ltd. v. Taff Vale Ry. Co.*, 12 Ry. & Can. Ca. at p. 74), Wright, J., doubted whether, under sect. 27 of the Traffic Act of 1888, the element of prejudice in competition is in any way an essential part of the cause of action.

219. In considering what is an undue preference regard may be had to the fact that competition between two or more railway companies exists. *Pickering Phipps v. L. & N. W. Ry. Co.*, [1892] 2 Q. B. 229; 61 L. J. Q. B. 379; 8 Ry. & Can. Ca. 83.

The Railway and Canal Traffic Act, 1854, does not prevent a railway company from having special rates of charge to a terminus to which traffic can be carried by other modes of carriage with which theirs is in

competition. *Foreman v. G. E. Ry. Co.*, 2 Ry. & Can. Ca. 202.

*Comp.*  
*xxiii.*  
*Art. 319.*

The existence of competition by sea is a justification for a reasonable reduction in the rates to and from the points affected by such competition. *Charrington & Co. v. Mid. Ry. Co.*, 11 Ry. & Can. Ca. 222; *Muntz's Metal Co. v. L. & N. W. Ry. Co.*, 14 Ry. & Can. Ca. 284 at p. 292.

It is a question of fact as to whether the existence of competition is a sufficient answer to a complaint of undue preference, and no appeal will lie from a decision of the Railway and Canal Commissioners thereon. *Abram Coal Co. v. G. C. Ry. Co.*, 12 Ry. & Can. Ca. 125.

In *Pickering Phipps v. L. & N. W. Ry. Co.*, *supra*, [1892] 2 Q. B. at p. 245, Lord Herschell, sitting in the Court of Appeal, said: "Whether you look at the Act of 1854 by itself, or whether you look at it in connection with the provisions of sub-sect. 2 of sect. 27 of the Act of 1888, to which I have been referring, it is impossible to say that there is anything in point of law which compels the tribunal to exclude from consideration this question of competing routes. . . . I am not suggesting that there may not be such an excessive difference in charge made in cases of competition, as that it would be unreasonable and unfair when you are looking at the position of the one trader as compared with the other. That may be so, but all that is matter for the tribunal to take into account."

In *Thompson v. L. & N. W. Ry. Co.*, 2 Ry. & Can. Ca. 115, the Railway Commissioners held that it might be true in certain circumstances to say that an advantage given by a railway company in order to obtain traffic for which they compete with another railway company does not amount to an undue preference.

The decision of the House of Lords in *L. & N. W. Ry. Co.*

Chap.  
XXIII  
Art. 219.

v. *Evershed*, 3 A. C. 1029; 48 L. J. Q. B. 22, in which it was held that competition was not a sufficient reason for an infringement of the "equality clause" of the Clauses Act, 1845, is not to be taken as applicable to cases of undue preference. See judgment of Lord Herschell in *Pickering Phipps v. L. & N. W. Ry. Co.*, [1892] 2 Q. B. at p. 249.

A colliery company (the applicants) consigned coal from their collieries by way of the defendants' railway to a private siding over a distance of thirty-one miles. E. & Co. also consigned coal from their collieries by way of the defendants' railway to the same private siding over a distance of thirty-three miles. The defendant railway company charged the applicants for the conveyance of their coal traffic between the two points 2s. 1d. a ton, and E. & Co. 1s. 9d. a ton. There was an alternative railway route by the line of the L. & N. W. Ry. Co. between the collieries of the applicants and those of E. & Co. and the said works, by which the distance from E. & Co.'s collieries was twenty miles, and from the applicants' collieries twenty-seven miles, and the rate of 1s. 9d. per ton was also the rate charged by the L. & N. W. Co. to E. & Co. by such shorter route. The defendant railway company contended that the existence of the shorter alternative route gave E. & Co. a geographical competitive position which justified the lower rate, and that to apply the mileage principle, where competitive routes exist, would shut out the longer route, and that this was not in the interests of the public.

At the first hearing before the Railway Commissioners it was held that the difference of 4d. per ton in favour of E. & Co. amounted to an undue preference, there not being sufficient public interest to justify so great a difference. Subsequently the defendant railway company reduced the rate charged to the applicants from 2s. 1d. per ton to 2s. per ton, leaving a difference of 3d. per ton in favour of E. & Co. instead of 4d. The applicants, not being satisfied with such reduction, again brought the matter before the Court, and it was then held by Bigham, J., and Lord Cobham (Sir Frederick Peel dissenting), that the preference of

3*d.* per ton given to E. & Co. was neither undue nor unreasonable. *Abram Coal Co. v. G. C. Ry. Co.*, 12 Ry. & Can. Ca. 125; Art. 287 and the cases there referred to.

Chap.  
XXIII.  
Art. 218.

Where the alternative routes are as much at the command of the applicants as of the traders to whom the alleged preference has been given, no distinction of terms can be made between them on the ground of competition. *Per* Sir F. Peel in *Daldy v. Mid. Ry. Co. and others*, 10 Ry. & Can. Ca. at p. 313.

But where a railway company defended a preferential rate given to a trader on the ground that he had other works which were served by a competing railway, it was held that this competition did not justify the preference. *Eastwood v. L. & N. W. Ry. Co.*, 13 Ry. & Can. Ca. 137.

In the following cases the existence of competition was held to justify a preferential rate.

*Holwell Iron Co. v. Mid. Ry. Co.*, 13 Ry. & Can. Ca. at pp. 256 and 264.

*Castle Steam Trawlers, Ltd. v. G. W. Ry. Co.*, 13 Ry. & Can. Ca. at p. 151 (competition by sea).

*Corporation of Birmingham v. Mid. Ry. Co.*, 14 Ry. & Can. Ca. 24 at p. 47.

**220.** Where a railway company refuse to make or continue a siding connection for a trader or refuse to deliver merchandise at his private siding, but provide such connection for his competitors in trade, or deliver similar merchandise at their private sidings, they thereby grant an undue preference to such competitive traders, and the Railway Commissioners have jurisdiction to order them to desist from so doing. *Beeston Brewery Co. v. Mid. Ry. Co.* (No. 1), 5 Ry. & Can. Ca. 53; *Girardot & Co. v. Mid. Ry. Co.*, 5

M.—C. 26

Chap.  
XXIII.  
Art. 290.

Ry. & Can. Ca. 60; *Cowan v. N. B. Ry. Co.* (No. 2),  
11 Ry. & Can. Ca. 96.

In the cases of *The Beeston Brewery Co.* and of *Girardot & Co.*, *supra*, the railway company had taken up certain sidings which they had constructed under agreements with the complainants or their predecessors, but still continued to give siding accommodation to other traders. This, it was held, would amount to the giving of an undue preference, assuming the circumstances in each case to be the same.

In *Cowan & Sons v. N. B. Ry. Co.* (No. 2), *supra*, the railway company who had for twenty-eight years received and delivered goods at a private siding belonging to a firm of traders informed the latter that, while they were willing to receive and deliver other goods as before, they would no longer deliver coal at the private siding. The railway company, however, continued to deliver coal at sidings belonging to trade competitors of the applicants. The Railway Commissioners decided that this action of the railway company amounted to giving an undue preference to such trade competitors, and the Second Division of the Court of Session held that the Railway Commissioners had jurisdiction to order the railway company to discontinue the same.

221. A railway company are justified in carrying goods for one person at a less rate than that at which they carry the same description of goods for another, if there be circumstances which render the cost to the company of carrying for the former less than the cost of carrying for the latter. *Oxlade v. N. E. Ry. Co.* (No. 1), 1 C. B. (N. S.) 454; 26 L. J. C. P. 129; *Guernsey Mutual Transport Co. v. L. B. & S. C. Ry. Co.*, 13 Ry. & Can. Ca. at p. 159.

If by reason of the gradient, or otherwise, the cost of conveyance to the railway company on one part of their line is different

to the cost on another part, a proportionate difference may be made in the mileage rate. *Nitshill Co. v. Cal. Ry. Co.*, 2 Ry. & Can. Ca. 39. Chap. XXIII.  
Art. 221.

In *Guernsey Mutual Transport Co. v. L. B. & S. C. Ry. Co.*, *supra*, it was held that a preferential rate was justified when it was charged for goods packed in such a way as to give a better wagon load than similar, but less effectively, packed goods for which a higher rate was charged.

**222.** A railway company are justified in carrying at a lower rate, in consideration of a guarantee of large quantities of traffic or full train loads at regular periods. *Nicholson and another v. G. W. Ry. Co.* (No. 1), 5 C. B. (N. S.) 366; 28 L. J. P. C. 89; *Ransome v. Eastern Counties Ry. Co.* (No. 4), 8 C. B. (N. S.) 709; 29 L. J. C. P. 329; *Daldy v. Mid. Ry. Co.*, 10 Ry. & Can. Ca. 303; see also *Strick v. Swansea Canal Co.*, 16 C. B. (N. S.) 245; 33 L. J. C. P. 240.

Provided that the offer of such lower rate is made public and is open to all traders. *Anderton Co. v. River Weaver Trustees*, 14 Ry. & Can. Ca. 136.

Any circumstance which makes it better worth the while of a railway company to carry the goods of one trader rather than those of another, may be taken into consideration. *Hickleton, &c. Co., Ltd. v. Hull, Barnsley, &c. Ry. Co.*, 12 Ry. & Can. Ca. 63.

These cases decided that a guarantee of a fixed minimum is a ground for lowering a rate. It was assumed in these cases that it was proved that the agreement had the effect of making it cheaper for the railway company to work the traffic, and therefore an agreement has force only so far as it affects the cost of working.



Chap.  
XXXII.  
Art. 229.

In *Greenop v. S. E. Ry. Co.*, 2 Ry. & Can. Ca. 319, the Commissioners held that a rebate of 15 per cent. and other allowances to customers who guaranteed "to send between Boulogne and London by the South Eastern Company's steamers and railway 850 tons each calendar month" was not unreasonable; but it should be noticed that the ground of defence on which the company mainly relied was that for the conveyance of goods between Boulogne and London they had to compete with the General Steam Navigation Company. See *Holland v. Festiniog Ry. Co.*, 2 Ry. & Can. Ca. 278; *Rhymney Iron Co. v. Rhymney Ry. Co.*, 6 Ry. & Can. Ca. 60.

In *Daldy v. Mid. Ry. Co.*, 10 Ry. & Can. Ca. 303, Wright, J., said: "It seems to me that the advantages of offering a special rate for large quantities which may be regarded as another form of competition ought to be considered. In fact I do not see how the every-day practice of all railway companies, of giving special rates for large quantities could be defended on any other ground."

In the same case, Sir F. Peel said: "This was *primâ facie* an undue prejudice to a merchant who sent a smaller quantity because an inequality of charge, founded merely upon one dealer doing a larger business with a railway company than another, is not allowable under the Traffic Acts. To justify the larger trader having a lower rate it must appear that there is a saving to the railway company in the carriage of his traffic, or something more than a mere quantitative difference to the company more or less equivalent to the advantage they give to him."

The granting by a railway company of season tickets at reduced rates to traders who send a minimum amount of traffic per annum over their line is not in itself an undue preference. *Inverness Chamber of Commerce v. Highland Ry. Co.*, 11 Ry. & Can. Ca. 218.

In *Hickleton, &c. Co., Ltd. v. Hull, Barnsley, &c. Ry. Co.*, 12 Ry. & Can. Ca. 63, the applicants consigned coal for shipment over the defendants' railway to Hull, a distance of 56 miles, and were charged 2s. 7d. per ton.

The D. Company also sent coal for shipment over the defendants' railway to the same dock, a distance of 56 miles, and were charged—

Chap.  
XXIII,  
Art. 222.

- (a) For any quantity up to 200,000 tons a year, 2s. 5d. per ton.
- (b) From 200,000 to 300,000 tons a year, 2s. 4d. per ton.
- (c) For any quantity above 300,000 tons a year, 2s. 3d. per ton.

These rates were charged to the D. Company under a guarantee given to the railway company to send a minimum quantity of 200,000 tons of shipment coal per annum. The applicants sent only some 60,000 tons of coal a year.

The Railway Commissioners held that under the circumstances the difference of 2d. a ton up to 200,000 tons and the still greater difference for larger tonnage was justified, such difference being made by the railway company in good faith for the protection of their own interests, and in the belief that the guarantee was worth the difference to them.

**223.** A preferential rate may be justified if it is the result of a fair and honest bargain the consideration for which has been conveyed to and enjoyed by the railway company. But such a bargain is to be viewed with suspicion. *Holwell Iron Co. v. Mid. Ry. Co.*, 13 Ry. & Can. Ca. 244; 14 Ry. & Can. Ca. 1.

In the above case the railway company had acquired under statutory powers certain private railways belonging to the S. Company, who were trade competitors of the applicants, the consideration for the purchase being in part a cash payment and in part an agreement (made some forty years before the date of the application), whereby the railway company agreed to haul certain traffic over the purchased lines at a low and, as compared with the applicants, a preferential rate, and also to make no charge for certain other services. The Court of Appeal, affirm-

Chap.  
XXIII.  
Art. 224.

ing the decision of the Railway Commissioners, held that this agreement was not illegal or *ultra vires* the railway company, and as it was a fair and *bonâ fide* bargain when made, the Commissioners were entitled to regard it as a justification of the preference complained of.

It may, however, be observed that in this case the agreement related to the acquisition of property over which the railway company had a compulsory power of purchase, and that the preferential treatment was confined to services rendered on the property which was the subject of the agreement. It may be doubted whether the principle involved can be extended to cases in which these conditions are absent.

See the next Article.

**224.** A railway company cannot justify an inequality in rates made for considerations collateral to the pecuniary interests of the company. *Harris v. Cockermouth and Workington Ry. Co.*, 3 C. B. (N. S.) 693; 27 L. J. C. P. 162; *Ransome v. Eastern Counties Ry. Co.* (No. 1), 1 C. B. (N. S.) 437; 26 L. J. C. P. 91; 1 Ry. & Can. Ca. 63.

In the above case of *Ransome* the decision was against the railway company, because their object was to enable rival coal owners to compete, a collateral object not sufficient to justify a reduction of rates.

It is not a legitimate ground for giving a preference to one of the customers of a railway company, that he engages to employ other lines of the company for the carriage of traffic distinct from and unconnected with the goods in question. It is undue and unreasonable to charge more or less for the same service, according as the customer of the railway thinks proper or not to bind himself to employ the company in other and totally distinct business. *Baxendale and others v. G. W. Ry. Co.* (*Bristol Case*), 5 C. B. (N. S.) 309; 28 L. J. C. P. 69.

Chap.  
XXIII.  
Art. 224.

This case proceeded on the ground that the consideration for the reduction of rates from A. to B. must be in respect of traffic on that route, and that it is not sufficient that the favoured customer undertakes to send all goods by other lines of the company to justify a reduction in the rate charged him from A. to B., his traffic from A. to B. alone not being worth the difference in charge.

See also *Bellsdyke Coal Co. v. North British Ry. Co.*, 2 Ry. & Can. Ca. 105.

In the case of *Diphwys Casson Slate Co. v. Festiniog Ry. Co.*, 2 Ry. & Can. Ca. 73, the Commissioners held that it was an undue preference where a railway company, with the object of discouraging the construction of a competing line, carried slate for certain quarry owners, who agreed to send all their slate over the railway company's line for a fixed number of years, at a less rate than they charged for the same service to the complainant quarry owners, who were offered, but refused to bind themselves by, such an agreement.

**225.** Sect. 27 (2) of the Railway and Canal Traffic Act, 1888, empowers the Railway Commissioners to consider whether an inequality in charges cannot be removed without unduly reducing the rates charged to the complainant.

In order to rectify an undue preference a railway company may either "level up" or "level down" existing rates. A "levelling up" will be justified where a "levelling down" would involve the risk of serious loss. See judgment of Lord Herschell in *Pickering Phipps v. L. & N. W. Ry. Co.*, [1892] 2 Q. B. at p. 248; 61 L. J. Q. B. 379; 8 Ry. & Can. Ca. 83; *Rishworth v. N. E. Ry. Co.*, 12 Ry. & Can. Ca. 34; see also *Liverpool Corn Traders Association v. L. & N. W. Ry. Co.*, 7 Ry. & Can. Ca.

Chap.  
XXIII.  
Art. 226.

at p. 134; *Joseph Watson, Ltd. v. Mid. Ry. Co.*, 13 Ry. & Can. Ca. at p. 344; 14 Ry. & Can. Ca. 18; *Grayson Lowood, Ltd. v. G. C. Ry. Co.*, 13 Ry. & Can. Ca. 281.

An increase of rate may be justified when it is made to remove a difference in treatment which may amount to an undue preference. *Joseph Watson, Ltd. v. Mid. Ry. Co.*, *supra*.

**226.** A railway company have no right to prefer themselves or their agents to the public and to carriers other than themselves. A railway company are bound to treat other carriers in the same way as other customers for all purposes, including the mode of charging in the aggregate. *Barendale v. North Devon Ry. Co.*, 3 C. B. (N. S.) 324; *Barendale v. G. W. Ry. Co. (Reading Case)*, 5 C. B. (N. S.) 336; 28 L. J. C. P. 81.

But a railway company are not bound to allow by way of a cartage rebate off a rate which includes collection and delivery the same amount as would be charged by them for cartage if performed by them as an independent service. *Pickfords, Ltd. v. L. & N. W. Ry. Co.*, 13 Ry. & Can. Ca. 31; 24 Times L. R. 149; 23 Times L. R. 535.

The ground of the decision in *Barendale v. G. W. Ry. Co.*, *supra*, was, that where a railway company carry on some other business, they must in respect of such business be taken to be *quoad* the railway in the position of third parties.

Many of the cases decided by the Court of Common Pleas under sect. 2 of the Railway and Canal Traffic Act, 1854, were applications for an injunction by carriers competing with railway companies, and complaining that in sending goods by railway and in

carting them to and from railway stations, the companies subjected the carriers to disadvantages, and gave themselves and their agents preferences which were undue. The same ground of decision as stated in this Article will be found in all the carriers' cases.

In *Cooper v. L. & S. W. Ry. Co.*, 4 C. B. (N. S.) 738, the Court decided that the railway company were not bound to unload carriers' trucks, but intimated that if they unloaded some they should unload all, or that they could be compelled to treat all equally by unloading none or all.

A railway company accepted parcels for conveyance to a place beyond the terminus of their railway. The parcels were addressed "Per F. & Co.," who were carriers. The railway company in a number of cases disregarded the words "Per F. & Co." and handed over the parcels to C. & Co., who were the railway company's agents, and also carriers on their own account. This was held to be an undue preference of C. & Co. *Ford v. L. & S. W. Ry. Co.*, 60 L. J. Q. B. 130; 7 Ry. & Can. Ca. 111.

In the same case the railway company charged F. & Co. rates in excess of those charged to other persons who were on a "favoured list," and whose parcels were delivered under the same circumstances to them by the railway company or their agents. C. & Co. delivered the parcels to F. & Co.'s customers at the lower rates, but as between themselves and the railway company it was understood that if they did so as the company's agents they must pay the difference to the company. The Railway Commissioners held that the railway company had given themselves and their agents an undue preference because as between F. & Co.'s customers and themselves the company were delivering to such customers at rates lower than those charged to F. & Co.

A carrier complained that his vans were not admitted to the goods yard of the railway company after 8.30 p.m. without a pass, while the railway company's own vans were allowed to enter without any such pass after that time. The railway company proved that they could not after that hour deal with the traffic unless the documents relating to the goods were perfectly in order, and that

Chap.  
XXIII.  
Art. 228.

they could ensure that this should be the case with regard to goods brought by their own vans but not with regard to goods brought by outside carriers. The Railway Commissioners held that the regulation was reasonable, and that the railway company had not given themselves an undue preference over the complainant. *Palmer v. L. & S. W. Ry. Co.*, 8 Ry. & Can. Ca. 53.

In the Irish case of *John Wallis & Sons v. G. N. Ry. Co. (Ireland)*, 12 Ry. & Can. Ca. 38, the railway company employed Messrs. Wordie, a firm of carriers, under a contract, to deliver all goods carried by the railway company to Dublin at cartage rates, and not invoiced to be delivered by any particular firm of carriers. Ninety-five traders in Dublin sent to the railway company general orders to hand over to Messrs. Wallis (another firm of carriers in Dublin) for cartage all inwards traffic consigned to them, "no matter how consigned or addressed," but the company refused to recognise such general orders. The Railway Commissioners held that, in view of the inconvenience which the recognition of such general orders would entail on the public and the railway company, and the small and irregular consignments of traffic carried for the traders giving such orders, the refusal to obey such general orders was not a denial of reasonable facilities for the delivery of traffic, nor an undue preference of Messrs. Wordie. See p. 198, *ante*, as to general orders relating to the employment of carting agents.

See also *James Bannatyne, Ltd. v. Gt. S. & W. Ry. Co.*, 12 Ry. & Can. Ca. 105.

A railway company give an undue preference when they collect goods consigned by traders in one town free of charge or allow a rebate in respect of the same if there is no collection by them, and charge for collection or allow no such rebate in the case of goods consigned by traders in another town. *Timm & Son v. N. E. Ry. Co. and others*, 11 Ry. & Can. Ca. 214.

A railway company carried traffic from A. station at collection and delivery rates, and appointed an agent to perform the service of carting to the station for them. The applicant, a carrier, also

Chap.  
XXIII.  
Art.

carted to the A. station goods for which the railway company charged collection and delivery rates. The company refused to pay applicant anything at all in respect of such cartage. The Railway Commissioners held, that if the railway company chose to protect themselves by charging only the rate, less the fair allowance for collection, they could do so; but if the goods were carried and charged for at a collection and delivery rate they were bound to pay a reasonable sum to the person who had performed the collecting service. The Commissioners ordered the railway company to pay to the applicant the sum of 10*d.* per ton in respect of the service so performed, this being the amount which they paid to their own agent for the service of actual cartage. *Menzies v. Caledonian Ry. Co.*, 5 Ry. & Can. Ca. 306.

A customer is not entitled to any allowance in respect of assistance in the loading, unloading, or weighing of goods given by his men to a railway company voluntarily, or for the customer's own convenience. *Edwards v. G. W. Ry. Co.*, 11 C. B. 588.

Upon complaint by a carrier, who collected and carted stamped and unstamped parcels to the railway company's terminus, that although the trouble and expense was the same to him whether parcels were stamped or unstamped, yet the railway company allowed him nothing in respect of the former; the Railway Commissioners held, that the railway company had not given an undue preference either to themselves or to the persons they employed as their carting agents, because they charged the public nothing for collection, and the collection of stamped parcels cost them nothing, their carting agents consenting to carry stamped parcels gratis in consideration of being paid 1*d.* for every unstamped parcel. *Robertson v. Midland G. W. Ry. Co. (Ireland)*, 2 Ry. & Can. Ca. 409.

The facts that a package is composed of separate parcels, the aggregate charge for which, if carried separately, would be greater than would be chargeable for the entire package, and that the person who tenders the package is himself a carrier, and collects such parcels in the way of his business, are no legal ground for



Chap.  
XXIII.  
Art. 226.

refusing to carry it on the same terms as similar packages for other persons. *Crouch v. L. & N. W. Ry. Co.*, 14 C. B. 255; 23 L. J. C. P. 73.

As to closing the doors of the station against the public or an individual, and not against the company's agent, see *Baxendale v. L. & S. W. Ry. Co.*, 12 C. B. (N. S.) 758; and *Palmer v. L. & S. W. Ry. Co.*, L. R. 1 C. P. 588; 35 L. J. C. P. 289.

227. Any arrangement in favour of one class of public vehicles entering their station yards over others of the same class, will be an undue preference on the part of a railway company, where it is shown to occasion public inconvenience, and there is no cause, such as want of space, for the preference. *Marriott v. L. & S. W. Ry. Co.*, 1 C. B. (N. S.) 499; 26 L. J. C. P. 154.

Where a railway company agreed with a cab proprietor, in consideration of his paying them 600*l.* per annum, to allow him the exclusive liberty of plying for hire within their station, the Court of Common Pleas refused to grant a writ of injunction against the railway company, at the instance of another cab proprietor, no inconvenience to the public being shown to have arisen from the arrangement. *Beadell v. Eastern Counties Ry. Co.*, 2 C. B. (N. S.) 509; 26 L. J. C. P. 250.

*Marriott's Case* was decided on the inconvenience inflicted on the public, not on the individual, and this was expressly stated to have been the ground of the decision. In *Beadell's Case*, and the cases of *Painter v. L. B. & S. C. Ry. Co.*, 2 C. B. (N. S.) 702, and *Ilfracombe Conveyance Co. v. L. & S. W. Ry. Co.*, W. N. 1868, p. 269; 1 Ry. & Ca. Tr. Ca. 61, the complainants were unsuccessful, because the Court was not satisfied that there was a substantial inconvenience to the public from the cab arrangements made for them by the railway company. The result of

these cases appears to be that omnibus and cab proprietors, &c., as such, have no *locus standi* to apply for an injunction, but that an injunction may be granted to admit their vehicles, if it be proved to be for the benefit of the public that they should be admitted.

Chap.  
XXVII.  
Art. 207.

In *Barker v. Midland Ry. Co.*, 18 C. B. 46; 25 L. J. C. P. 184, it was held that no action lies for excluding an omnibus from a railway station.

Jervis, C. J., in giving judgment in that case, said: "It is not pretended that the plaintiff was using or seeking to use the railway. What right, then, can he have to say to the company, 'I will use your private property for my profit'?"

Willes, J., said: "It is not alleged that there has been any dedication of this place to the public; but it is said that it is the duty of a carrier to allow persons who bring passengers or goods to be carried, to enter his premises for the purpose of delivering there the passengers or the goods. It certainly would be somewhat extraordinary if any such right could exist in one to whom the company owes no direct duty."

See also *Perth Station Committee v. Ross*, [1897] A. C. 479, *post*, p. 486.

**228.** The Railway Commissioners have jurisdiction to inquire into a complaint of undue preference being shown by railway companies to one town or place over another town or place. *Corporation of Dover v. S. E. Ry. Co. and L. C. & D. Ry. Co.*, 1 Ry. & Can. Ca. 349.

To a complaint under sect. 2 of the Railway and Canal Traffic Act, 1854, of an inequality of charge, it is no answer that the traffic favoured and the traffic prejudiced are not in the same locality or district; and, assuming that there is a competition of interests,

Chap.  
XXVII  
Art. 229.

and that circumstances in other respects are not dissimilar, the traffic of two localities, both on the same system of railways, although at a distance from each other, is as much within the Act as the traffic of two or more individuals in the same locality. *Richardson and others v. Midland Ry. Co.*, 4 Ry. & Can. Ca. 1.

In such a case a difference of mileage, although not decisive, is an important factor. *Carrickfergus, &c. Commissioners v. Belfast and Northern Counties Ry. Co.*, 10 Ry. & Can. Ca. 74.

A preference of one town over another may be justified by the exigencies of the traffic, see *Hozier's Case*, 17 Sess. Ca. (2nd Series) 302; *The Caterham Ry. Co.'s Case*, 1 C. B. (N. S.) 410; 26 L. J. C. P. 16; and *Jones' Case*, 3 C. B. (N. S.) 718; as to how far the Court will interfere to prevent such preference in the absence of sufficient justification, see the judgments of Lord President M'Neill in *Hozier's Case*, and of Cockburn, C. J., in *Baxendale v. G. W. Ry. Co. (Reading Case)*, 5 C. B. (N. S.) 336; 28 L. J. C. P. 81; see also *Town Commissioners of Newry v. G. N. Ry. Co. (Ireland)*, 7 Ry. & Ca. Tr. Ca. 184.

As to uniform or group rates for a district, see *ante*, p. 387.

As to undue preference of ports, see *ante*, p. 390.

**229.** In making a complaint of undue preference to the Railway Commissioners involving the investigation of a through rate, a railway company who are parties to the rate ought not to be joined as defendants unless some relief is sought and an order can be made against them. *Read Holliday, Ltd. v. Mid. and N. E. Ry. Cos.*, [1915] 3 K. B. 616; 16 Ry. & Can. Ca. 26.

In *Chance and Hunt v. G. W. Ry. Co.*, 15 Ry. & Can. Ca. at p. 262, the Railway Commissioners held that the G. W. Co.

were liable to pay only such part of an overcharge as was in fact retained by them as being their part share of a through rate, and that another railway company, who were parties to the through rate, should have been joined as defendants.

Chap.  
XXIII.  
Art. 229.

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No comparison can be made for the purpose of undue preference between rates charged by different railway companies in respect of different lines. See *Grayson Lowood, Ltd. v. G. C. Ry. Co.*, 13 Ry. & Can. Ca. at p. 284.

**230.** If a railway company carry goods for a customer at a lower rate than that charged to other customers, it may be an undue preference, and give to other customers a right to complain before the Railway Commissioners, but it is not an act *ultra vires* the company; and it gives no right to a shareholder of the company to bring an action against the company and the preferred customer for an account, and an order that the preferred customer should make good the deficiency, or for an injunction to restrain further preferences. *Anderson v. Mid. Ry. Co.*, [1902] 1 Ch. 369; 71 L. J. Ch. 89.

## PART V.



## CHAPTER XXIV.

## THE CARRIAGE OF ANIMALS BY RAILWAY.



## I.—BY STATUTE.

Ch. XXIV.  
Art. 231.

**231.** Sect. 2 of the Railway and Canal Traffic Act, 1854, imposes on a railway company the duty to afford reasonable facilities for carrying animals.

A railway company are not bound to be common carriers of animals, yet being bound by such section to afford facilities for their carriage, they can only limit their liability in respect thereof by reasonable conditions. *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. 176; 56 L. J. Q. B. 111.

As to the facts of this case, see p. 420, *post*.

Before the passing of the Railway and Canal Traffic Act, 1854, railway companies could lawfully refuse to carry animals except upon their own terms. They used to issue the following notice:—

“The —— Railway Company give notice that they will not, under any circumstances, be answerable for injury to horses conveyed upon their railway; and they will not receive any horse for conveyance unless accompanied by a declaration, signed by the owner or his authorized agent, that the company are not to be liable

for injury to such horse while in their custody, although every proper precaution will be taken to secure their safe conveyance." Ch. XXIV.  
Art. 221.  
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Cf. for example, *Carr v. Lanc. & York. Ry. Co.*, 21 L. J. Ex. 261, and *Chippendale v. Lanc. & York. Ry. Co.*, 21 L. J. Q. B. 22.

Standard terms and conditions have now been settled by the Rates Tribunal in accordance with the provisions of the Railways Act, 1921, s. 43 (1), and these "shall be deemed to be reasonable" as from a date to be fixed by the Tribunal. *Ibid.*, sect. 43 (2). See Appendix, Forms C. and D., *post*, pp. 611 and 619.

Irrespective of conditions the consignor will not recover in an action against them for loss unless negligence be proved, or the company have undertaken to carry as common carriers. *Richardson v. N. E. Ry. Co.*, L. R. 7 C. P. 75; 41 L. J. C. P. 60. The facts in that case were these:—

A dog was delivered by its owner to a railway company for carriage on their railway. The company received it, not as common carriers, but as ordinary bailees. The dog was delivered with a collar on it and a strap attached thereto. During the journey there was a change of trains; for security during the interval of change a servant of the company fastened the dog up by means of the strap, and the dog slipped off the collar, got on to the railway, and was killed. It was held, that fastening the dog by the means furnished by the owner himself, and which at the time appeared to be sufficient, was no evidence of negligence on the part of the company, who were therefore not liable.

It was found as a fact in the case stated, that the company were not common carriers of dogs, so as to have an absolute responsibility imposed on them. Consequently, the company were, with reference to the dog in question, in the position of ordinary bailees, and only liable for its loss in the event of negligence on their part, and not liable if its loss was attributable to the negligence of the person who delivered the dog to the company.

**Ch. XXIV.**  
**Art. 231.**

As to the measure of damages where a railway company fail to provide horse-boxes, pursuant to contract, for the conveyance of horses, and the horses had to be sent by road, and were injured on the journey, see *Walker v. Mid. Gt. W. of Ireland Ry. Co.*, 4 L. R. Ir. 376.

**232.** The conditions of carriage of livestock at ordinary (*i.e.*, company's risk) rates or at owner's risk rates as settled by the Railway Rates Tribunal shall be deemed to be reasonable as from the date fixed by the tribunal (Railways Act, 1921, s. 43), and apart from special contract the company's risk conditions as so settled shall apply to livestock carried at ordinary rates. *Ibid.* s. 44 (1), and see Chap. XI., *ante*.

A railway company may also make a special contract with the consignor in respect of the receiving, forwarding and delivering of any animals, provided that the contract is—

- (1) in writing,
- (2) signed by the consignor or the person delivering such animals for carriage, and
- (3) its conditions are just and reasonable.

*Ibid.* s. 44 (3).

So, too, where an owner's risk rate is in operation and the company have been requested in writing to carry at that rate, the terms and conditions upon and subject to which such merchandise (which includes livestock) shall be carried shall be owner's risk conditions. *Ibid.* s. 44 (1).

"A railway company shall be under no obligation to carry livestock at owner's risk rates in cases in which livestock is not at the date of the passing of this Act" (*i.e.*, 19th August, 1921) "carried at reduced rates under owner's risk conditions." *Ibid.* s. 46 (4).

**233.** A railway company liable for the loss of, Ch. XXIV.  
Art. 233.  
or any injury to, any horses, cattle, or other animals, in the course of receiving, forwarding, or delivering them, if occasioned by their neglect or default or that of their servants, notwithstanding any notice, condition or declaration, but may exempt themselves by a signed contract the conditions of which are adjudged to be reasonable. Railway and Canal Traffic Act, 1854, s. 7; see *ante*, Art. 119, p. 137.

A contract to carry at a reduced rate, whereby the company are exempted from liability for injury "from whatever other cause arising," which will include negligence, is reasonable if a genuine alternative offer to carry with a liability for injury due to negligence is given. *M. S. & L. Ry. Co. v. Brown*, 8 App. Cas. 703; 53 L. J. Q. B. 124.

See *ante*, p. 141, and last preceding Article, No. 232.

**234.** As from the appointed day, a railway company will not be liable for the loss of, or injury done to, any of the following animals beyond the sums hereinafter mentioned, viz.:—

A horse .....	£100
Neat cattle (per head) .....	£50
Any other animal .....	£5

unless the person sending or delivering the same to the railway company at the time of such delivery declares them to be respectively of higher value than as above mentioned; in which case it shall be lawful for the railway company to demand and receive, by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of



Ch. XXIV.  
Art. 224.  
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the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge. Railway and Canal Traffic Act, 1854, s. 7, as amended by the Railways Act, 1921, s. 56 (1) and Sched. 6.

The proof of the value of such animals, and the amount of the injury done thereto, in all cases lies upon the person claiming compensation for such loss or injury. *Ibid.*

It should be noted that by Condition 4 of the standard conditions of carriage of live stock (*vide* Appendix, Forms C. and D.) a further limitation is imposed. The liability of a railway company in respect of any dog, deer, or goat is thereby limited to 2*l.*, for any rabbit or other small quadruped, and any head of poultry or other bird to 7*s.* 6*d.*, unless a higher value be declared.

Until the appointed day (see *ante*, pp. 221—2) the limitation of value established by the Traffic Act, 1854, s. 7, will remain in force, namely, 50*l.* for a horse, 15*l.* for neat cattle per head. and 2*l.* for sheep or pigs per head.

Sect. 7 of the same Act also enacts that the percentage or increased rate of charge thereby authorised shall be notified in the manner prescribed in the Carriers Act, 1830, and shall be binding upon the company in the manner therein mentioned. These requirements are stated *ante*, Art. 47, p. 57.

The onus of proof that the percentage charged is reasonable lies on the railway company. *Per* Lord Esher, M. R., in *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. 176, at 181; 56 L. J. Q. B. 111.

It is a question for a jury whether the percentage charged for the extra value declared is reasonable. *Harrison v. L. B. & S. C. Ry. Co.*, 31 L. J. Q. B. 113.

In *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. 176; 56 L. J. Q. B. 111, the consignor's servant, upon delivering a dog to the defendants for carriage, had signed a printed form which

contained the conditions upon which the railway company accepted the dog for carriage. The terms were as follows: "Notice is hereby given that the company are not and will not be common carriers of dogs, nor will they receive dogs for conveyance except on the terms that they shall not be responsible for any amount of damages for the loss thereof or for injury thereto beyond the sum of 2*l.*, unless a higher value be declared at the time of delivery to the company, and a percentage of 5 per cent. paid upon the excess of value beyond the 2*l.* so declared." No declaration of value was made at the time of delivery, and no extra payment was made. The value of the dog was estimated at 60*l.* The dog being injured during the transit owing to the negligence of one of the defendants' servants, the plaintiff sued the railway company for 25*l.*, being the amount by which the value of the dog had deteriorated. The railway company relied upon the terms of the above signed notice. The Court of Appeal held that a percentage may be reasonable, irrespective of distance, but that the above conditions were unreasonable on the ground that the extra charge of 5 per cent. upon the excess of value over 2*l.* was, in the absence of evidence to the contrary, excessive.

As the result of this decision the railway companies altered the 5 per cent. in their printed forms to 1½ per cent.

In *Williams v. Mid. Ry. Co.*, '1908 1 K. B. 252; 77 L. J. K. B. 157, where the facts were analogous to those in *Dickson's Case*, except that the extra charge was 1½ per cent., the Court of Appeal, reversing the decision of Walton, J., held that this percentage was reasonable, the fact that it had been in existence for 16 years being evidence of its reasonableness, and that therefore the railway company were not liable under the signed contract.

To entitle the company to demand the percentage under sect. 7, the sender must make a declaration of the value with the intention of paying the percentage, and the knowledge of the railway company as to the value of a horse not derived from a declaration by the sender does not give the company any right to demand

**Ch. XXIV.** such increased rate of charge. *Robinson v. L. & S. W. Ry. Co.*, 34 L. J. C. P. 234. In that case a special jury found 5 per cent. on the additional value of a horse above 50*l.* for carriage above fifty miles reasonable. Some railway companies charge a small additional percentage per mile, while others charge an equal percentage whatever the distance may be.

The sender cannot recover any greater damages for the loss of, or injury done to, a horse or other animal while in the hands of the railway company than the amount of the declared value. *McCance v. L. & N. W. Ry. Co.*, 3 H. & C. 343; 11 L. T. 426; *Nevin v. Great Southern & Western Ry. Co.*, 30 L. R. Ir. 125.

Deterioration of cattle from want of food and water is an "injury" within the meaning of the Act. *Allday v. G. W. Ry. Co.*, 34 L. J. Q. B. 5; 5 B. & S. 903.

Dogs are comprehended in the words "other animals" in sect. 7 of the Act of 1854. *Harrison v. L. B. & S. C. Ry. Co.*, 31 L. J. Q. B. 113; 2 B. & S. 122, 152.

As to what conditions in contracts for the conveyance of livestock have been held to be reasonable or unreasonable, see note to Articles 121 and 122, *ante*, pp. 143 and 147.

Where an agent who is employed to deliver cattle to be sent by a railway company signs the consignment note, he must be taken to have known the contents, and thereby binds his principal. *Kirby v. G. W. Ry. Co.*, 18 L. T. 658. Martin, B., in delivering judgment in that case, said: "It would be dangerous to hold that because the man who signed the note did not know its contents the contract would not be valid, when he was sent for the express purpose of making the contract under which the cattle were to be carried."

Where injury was done to a horse at a railway station by the negligence of the company before the declaration of value had been made, or ticket taken, or rate demanded, it was held that this was an injury in the *receiving*, and the owner could not recover more than 50*l.*, even though it was the usual practice to put horses into the horse-boxes before declaring their value or paying the rate.

*Hodgman v. W. Midland Ry. Co.*, 35 L. J. Q. B. 85; 6 B. & S. 560. In that case the facts were these: As the groom was leading the horse, by the direction of one of the railway porters, to a particular part of the yard, the horse was startled by another horse, and backed, in consequence, on some sharp iron girders which seriously injured it, so that it was necessary to kill it. The jury found that the railway company were guilty of negligence in leaving the girders where they were lying.

Ch. XXIV.  
Art. 294.

Mellor, J., said in the Court below, at 33 L. J. Q. B. 237: "It appears to me that the more reasonable construction is, that so soon as the horse enters the company's premises for the purpose of being received, forwarded and delivered, the act of delivering begins, and that if the person sending a horse to be carried on the railway, desires to be in a position to recover against the company greater damages than the amount limited by the statute, he must *have made* the requisite declaration of value before the horse was taken to the premises of the company."

Where a railway company in breach of their contract to carry by a particular route, carry goods by another route and they are lost or damaged, the company cannot claim the protection of indemnity clauses in that contract; but their liability is limited by the Railway and Canal Traffic Act, 1854, s. 7. *Polwarth (Lord) v. North British Ry. Co.*, [1908] S. C. 1275.

**235.** Where a railway company, under a contract for carrying animals by sea, procure the same to be carried in a vessel not belonging to them, their liability in respect of loss or damage to such animals is the same as if the vessel had belonged to them. The Regulation of Railways Act, 1871, s. 12.

Where a company by through booking contracts to carry any animals from place to place partly by railway and partly by sea, a condition exempting the

Ch. XXIV.  
Art. 203.

company from liability for any loss or damage which may arise during the carriage of such animals by sea from the act of God, the King's enemies, fire, accidents from machinery, boilers and steam, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, shall, if published in a conspicuous manner in the office where such through booking is effected, and if printed in a legible manner on the receipt or freight note which the company gives for such animals, be valid, as part of the contract between the consignor of such animals and the company in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such conditions. Regulation of Railways Act, 1868, s. 14.

By a proviso to the above sect. 12 of the Act of 1871, the liability thereby imposed only attaches when the loss or damage to the animals happens during the carriage of the same in such vessel, the proof to the contrary to lie upon the railway company.

**236.** The Board of Agriculture (now styled the Ministry of Agriculture and Fisheries), in exercise of the powers vested in them under the Diseases of Animals Act, 1894, may make orders prohibiting animals being taken into or removed from areas which have been declared to be infected with disease, and providing for the cleansing and disinfecting of horse-boxes, cattle-trucks, &c., for protecting animals from unnecessary suffering during inland transit, and for securing them a proper supply of water and food during detention, and for other purposes.

The Board of Agriculture have dealt with the obligations of

railway companies under the Act by the Animals (Transit and General) Order, 1912, as amended by later Orders of 1912 and 1913. Ch. XXIV.  
Art. 234.  
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**237.** "Every railway company shall make a provision to the satisfaction of the Board of Agriculture of water and food, or either of them, at such stations as the Board, by general or specific description, direct, for animals carried, or about to be or having been carried, on the railway of the company." Diseases of Animals Act, 1894, s. 23 (1).

The rest of the section is as follows:—

"(2.) The water and food so provided, or either of them, shall be supplied to any such animal by the company carrying it, on the request of the consignor, or of any person in charge thereof.

"(3.) As regards water, if, in the case of any animal, such a request is not made, so that the animal remains without a supply of water for twenty-four consecutive hours, the consignor and the person in charge of the animal shall each be guilty of an offence against this Act; and it shall lie on the person charged to prove such a request and the time within which the animal had a supply of water.

"(4.) But the Board may, if they think fit, by order prescribe any other period, not less than twelve hours, instead of the period of twenty-four hours aforesaid, generally, or in respect of any particular kind of animals.

"(5.) The company supplying water or food under this section may make, in respect thereof, such reasonable charges (if any) as the Board by order approve, in addition to such charges as they are for the time being authorized to make in respect of the carriage of animals. The amount of those additional charges accrued due in respect of any animal shall be a debt from the consignor and from the consignee thereof to the company, and shall be recoverable by the company from either of them, with costs, by pro-

Ch. XXIV.  
Art. 227. proceedings in any Court of competent jurisdiction. The company shall have a lien for the amount thereof on the animal in respect whereof the same accrued due, and on any other animal at any time consigned by or to the same consignor or consignee to be carried by the company."

Where it becomes reasonably necessary that animals should be fed during transit, a request to that effect on the part of the consignor will be presumed, and it is the duty of the carrier to supply food at the cost of the owner. *G. S. & W. Ry. Co. (Ireland) v. Hourigan*, 44 Ir. L. T. 86.

238. The railway companies have submitted to the Rates Tribunal a schedule of standard charges proposed to be made by them in respect *inter alia* of the carriage of animals. Cf. Railways Act, 1921, s. 30.

The Rates Tribunal will settle these charges and appoint a day for them to come into operation. *Ibid.* s. 31; see *ante*, p. 222.

Such charges so settled shall be termed "standard charges," and no variation shall be made from them unless by way of an exceptional rate continued, granted or fixed under the provisions of the Railways Act, 1921, Part III., or in respect of competitive traffic in accordance therewith. *Ibid.* s. 32.

See further, *ante*, pp. 221—223.

For the purposes of the Railways Act, 1921, unless the context otherwise requires, "merchandise" includes live stock and animals of all descriptions. Railways Act, 1921, s. 57.

## II.—GENERALLY.

239. The liability of a railway company, if they undertake the obligation of acting as common carriers

of live animals, is the same as that of common carriers of goods. Ch. XXIV.  
Art. 229.

Thus, where the loss or damage is wholly attributable to the development of an inherent vice in the animal itself, such as its violence or restiveness, the carrier is not liable (*Blower v. G. W. Ry. Co.*, L. R. 7 C. P. 655; 41 L. J. C. P. 268; *Kendall v. L. & S. W. Ry. Co.*, L. R. 7 Ex. 373; 41 L. J. Ex. 184) unless the occasion for such development be caused by the negligence or default of the carrier. *Gill v. M. S. & L. Ry. Co.*, L. R. 8 Q. B. 186; 42 L. J. Q. B. 89.

The above-cited case of *Blower v. G. W. Ry. Co.* decides that a railway company are not liable for the loss of an animal breaking loose from ordinary restraints by its own special violence. A bullock, in that case, was properly loaded into a suitable truck by the railway company. The truck was properly fastened and secured, but in the course of its journey the bullock in fact escaped, and was found lying dead on the railway. There was no negligence on the part of the railway company. The escape of the bullock was wholly attributable to the exertions of the animal itself, and it was held that the company were not liable for the loss of the animal.

In *Kendall v. L. & S. W. Ry. Co.* (*supra*), a horse was placed by the railway company's servants in a proper horse-box in the usual manner. At the end of the journey the horse was found to be injured in the forearm and fetlock. The horse was proved to be free from vice, and nothing unusual occurred to the train during the journey. Bramwell, B., said, at p. 377: "There is no doubt in this case that the horse was the immediate cause of its own injuries; that is to say, no person got into the box and injured it. It slipped or fell, or kicked or plunged, or in some way hurt itself. If it did so from no other cause than its



**CH. XXIV.** inherent propensities, its 'proper vice,' that is to say, from fright  
**Art. 239.** or temper, or struggling to keep its legs, the defendants are not liable. But if it so hurt itself from the defendants' negligence, or any misfortune happening to the train, though not through any negligence of the defendants, as for instance, from the horse-box leaving the line owing to some obstruction maliciously put on it, then the defendants would, as insurers, be liable."

In that case, as in *Blower v. G. W. Ry. Co.*, the animals were carried under a special contract, made in accordance with sect. 7 of the Railway and Canal Traffic Act, 1854, but no question arose as to the reasonableness of the contract.

The degree of care which it is the duty of a carrier to use must vary with the thing carried. It is his duty to do what he can to avoid all perils, including the excepted perils. See *Gill v. M. S. & L. Ry. Co.*, *ante*, p. 427.

If the development of the vice is incidental to the carriage the carrier is not liable, even though if the thing were not carried the vice would not develop. For example, where an engine was being drawn by horses to a railway station and one of the shafts, being rotten, broke, and the horses taking fright the engine was upset and damaged, the Court held that the railway company were not liable. *Lister v. L. & Y. Ry. Co.*, [1903] 1 K. B. 878; 72 L. J. K. B. 385.

In a case decided in the Court of Session in 1870, the Lord Justice Clerk (Moncreiff) said, at p. 52: "I do not think that in the carriage of live animals a railway company are insurers to the extent that, if the animal die in the course of the transit, the value or loss must fall on them. I think that, as a general proposition, cannot be maintained. There may be presumptions in a particular case, throwing the *onus* of proof of the cause of death on the one side or the other; but I do not think that the general proposition is well founded." *Paxton v. North British Ry. Co.*, 9 Sess. Ca. (3rd Ser.) 50.

A horse fastened in the usual way in a railway horse-box struggled through the feeding-window (about twenty-five inches

square) into the adjoining compartment, and was thereby injured. The Court of Session held that the accident was not of a kind that the railway company were bound to have foreseen and to have provided against, and that they were not liable in damages. *Ralston v. Caledonian Ry. Co.*, 5 Sess. Ca. (4th Ser.) 671.

A shipowner has been held not liable for the loss of a horse caused partly by the excepted cause of a storm, and partly by the inherent fright of the animal excited by the storm. *Nugent v. Smith*, 1 C. P. D. 19, 423; 45 L. J. C. P. 19, 697.

In an action against a railway company for injuries to cattle proved to have been safely placed in their truck, but found to be injured on arrival at their destination, the burden of proving negligence is on the plaintiff. *Smith v. Midland Ry. Co.*, 57 L. T. 813; *Russell v. L. & S. W. Ry. Co.*, 24 T. L. R. 548.

**240.** In order to render the railway company liable. the animals must be duly delivered to them or to someone entrusted by them to receive them. (See *ante*. Art. 19, p. 28.) Such delivery must be in conformity with the known course of the railway company's business, or it will not bind them. *Slim v. G. N. Ry. Co.*, 14 C. B. 647.

In that case the owner of cattle, in defiance of what he knew to be the course of business of a railway company, permitted the cattle to be delivered to a servant of the company at one of their stations, without getting an acknowledgment from the proper officer that the cattle had been received for the purpose of being carried, and it was held that the company were not responsible for the non-delivery of the cattle, although they were proved to have been delivered to one of their servants.

**241.** A railway company are bound to provide trucks that are reasonably sufficient for the conveyance of animals under the ordinary incidents of a railway

Ch. XXIV.  
Art. 241.

journey. *Amies v. Stevens*, 1 Str. 127; *Blower v. G. W. Ry. Co.*, L. R. 7 C. P. 655; 41 L. J. C. P., 268. See *Comb v. L. & S. W. Ry. Co.*, 31 L. T. 613.

In *Amies v. Stevens* it was said: "No carrier is obliged to have a new carriage for every journey. It is sufficient if he provides one which without any extraordinary accident will probably perform the journey." As to the liability of a railway company for loss or damage due to any defect in the vehicle, see *ante*, Art. 133, p. 165.

A condition that a railway company shall not be responsible for any injury to live stock extends to defects in trucks, and has been held not to be an unreasonable condition within the Railway and Canal Traffic Act, 1854. *McManus v. L. & Y. Ry. Co.*, 27 L. J. Ex. 201. Cf. also *Nevin v. Great S. & W. Ry. Co.*, 30 L. R. Ir. 125.

**242.** A railway company as carriers of cattle are, in the absence of special contract, only bound to carry in a reasonable time, and a consignor of cattle is bound by the ordinary traffic arrangements of the company, whether published or not. *Tobin v. L. & N. W. Ry. Co.*, [1895] 2 Ir. R. Q. B. D. 22. See Art. 143, *ante*, p. 180.

The reasonableness of such arrangements is a matter for the Railway Commission, and cannot be submitted to a jury in an action by the consignor against the company for breach of contract. *Ibid.*

In *Briddon v. G. N. Ry. Co.*, 28 L. J. Ex. 51, it was held that a railway company was not bound to use extraordinary efforts or incur extra expense in order to surmount obstructions caused by the act of God: as a fall of snow.

Pollock, C. B., in delivering judgment in that case, said: Ch. XXIV.  
Art. 542.  
 "The question was substantially left to the jury whether, under all the circumstances, the detention of these cattle was the result of the snow, or was owing to the negligence or supineness of the company's servants. The jury have found upon that question in favour of the defendants, and rightly. There is a distinction between trains for passengers and for goods or cattle. The owners of goods or cattle have no right to complain that extraordinary efforts which are made to forward passengers are not used to forward cattle or goods. The contract entered into was to carry the cattle to Nottingham without delay, and in a reasonable time under ordinary circumstances. If a snow-storm occurs which makes it impossible to carry the cattle, except by extraordinary efforts, involving additional expense, the company are not bound to use such means and to incur such expense." Unless a lower rate be charged or other like benefit given to the consignor, it is *primâ facie* an unreasonable condition that a railway company shall not be responsible for injury from detention or delay in the delivery of cattle (*Allday v. G. W. Ry. Co.*, 34 L. J. Q. B. 5), and though such may be reasonable where there is a fair alternative offered, a deliberate and unjustifiable refusal to deliver cattle is not detention within such a condition. *Gordon v. G. W. Ry. Co.*, 8 Q. B. D. 44.

If the company only profess to run trains for a certain class of traffic at stated intervals, it will be within a reasonable time if they carry in due course according to their profession. But where a company received cattle for conveyance, and it did not appear that there were any ordinary cattle trains on the line, it was held to be properly left to the jury to say what was a reasonable time within which to convey the cattle, and therefore whether the company were bound to send them by a special train. *Donohoe v. L. & N. W. Ry. Co.*, 15 W. R. 792.

As to the measure of damages in case of unreasonable delay in delivery, see Art. 144, *ante*, p. 181.

A falling off in condition of cattle in consequence of delay in

**Ch. XXIV.** delivery, and from want of food and water, amounts to an  
**Art. 242.** "injury" within the meaning of sect. 7 of the Railway and Canal Traffic Act, 1854. *Allday v. G. W. Ry. Co.*, *ante*.

In Ireland it has been held that where it is the custom of a railway company to feed animals consigned to them for carriage at the expense of the consignor during delay in transit, a request under 41 & 42 Vict. c. 74, s. 33, will be implied, and the company incurs liability for any loss occasioned by leaving the animals unfed. See *Curran v. M. G. W. Ry. Co.*, [1896] 2 Ir. R. 183.

**243.** It is the duty of a railway company to provide fit and proper places for receiving and delivering animals. *Rooth v. N. E. Ry. Co.*, L. R. 2 Ex. 173; 36 L. J. Ex. 83.

In that case it was held that a railway company cannot relieve themselves from this duty by inserting conditions in a special contract for the carriage of cattle. The conditions in that case are set out *ante*, p. 147.

In *Roberts v. G. W. Ry. Co.*, 27 L. J. C. P. 266, it was held that there is no specific obligation on a railway company carrying live stock to provide fences or guards at the station where the animals are unloaded, so as to ensure their not straying on the line.

The question whether a fit and proper place for reception and delivery has been provided is one for a jury. *Rooth v. N. E. Ry. Co.*, *supra*.

**244.** The responsibility of a railway company as carriers of animals terminates when their duties as carriers are concluded. *Shepherd v. Bristol & Exeter Ry. Co.*, L. R. 3 Ex. 189; 37 L. J. Ex. 113.

In this case the consignee had taken possession of the cattle, but had not removed them from the company's premises when

the injury occurred, and it was held that the railway company were no longer responsible as carriers. Ch. XXIV.  
Art. 244.

Many questions of great nicety have arisen as to whether a railway company have delivered the cattle either actually or constructively.

In the case of *Wise v. G. W. Ry. Co.*, 25 L. J. Ex. 258; 1 H. & N. 63, it was assumed to be the duty of the sender or the consignee of the animals to provide for the reception of the cattle on their arrival at the station to which the railway company undertook to carry them, and that the railway company were therefore not liable for damage to cattle occasioned by there being no one to receive them on their arrival.

In that case a horse was delivered to the Great Western Railway Company at N. to be conveyed to W. for the plaintiff. The person who delivered the horse signed the following document:—

“Great Western Railway. 9.45 train. March 31, 1855. Newbury to Windsor. Mr. Wise, of Eton, paid for one horse 12s. 6d. Notice.—The directors will not be answerable for damage done to any horses conveyed by this railway. I agree to abide by the above notice. W. T. Johnson.” The horse reached the station at W. safely, but the company’s servants there either forgot or did not notice that the horse had arrived, and on the plaintiff calling for it the next day it was discovered in a horse-box on a siding, and found to have sustained serious injuries from cold and from remaining in a confined position all night. It was held that the railway company were protected from liability under the Railway and Canal Traffic Act, 1854, s. 7, by the signed contract.

It is possible that independently of such contract the railway company would not have been responsible, the injury having been the result of the plaintiff not being ready to receive the horse on its arrival at W.

A railway company at the end of the journey may put a horse into a livery stable if no person come to fetch him from the station,

**CH. XXIV.** and may recover the livery charges from the consignee. *G. N. Ry. Co. v. Swaffield*, L. R. 9 Ex. 132; 43 L. J. Ex. 89.

The plaintiff delivered cattle, carriage prepaid, to the defendant railway company for carriage on the terms of signed conditions, whereby, in consideration of an alternative reduced rate, it was agreed that the company were "not to be liable in respect of any loss or detention of or injury to the said animals, or any of them, in the receiving, forwarding, or delivery thereof, except upon proof that such loss, detention, or injury arose from the wilful misconduct of the company or its servants." The cattle were carried, but, on application made for them by the plaintiff, the defendants, in consequence of their clerk having negligently omitted to enter the cattle on the consignment note as "carriage paid," refused to deliver them, and alleged that the carriage was not paid. The cattle were kept exposed to the weather until the next day, when, the mistake having been ascertained, they were delivered. They were damaged by the exposure. In an action for damages by reason of wrongful detention and negligence, it was held that the withholding of the cattle, under a groundless claim to retain them, at the end of the transit, was not "detention" within the conditions, and the company were therefore liable. *Gordon v. G. W. Ry. Co.*, 8 Q. B. D. 44; 51 L. J. Q. B. 58.

In *Jarman v. G. W. Ry. Co.*, 22 W. R. 73, which was an action for injury done to cattle by negligent detention, the contract was to carry at owner's risk, with the condition as to wilful misconduct on the part of the company's servants. Blackburn, J., said: "If the railway company, having had distinct notice that the running of their trains was very dangerous indeed, owing to the badness of the points, and they were to continue to run their trains without the slightest attempt to put the matter right, that, I should say, would be clearly wilful misconduct."

As to the position when the consignee of live stock, with the assent of the railway company, is engaged for the convenience of both parties in taking delivery in a particular way, and, while

so engaged, is injured by the negligence of the company's servants, Ch. XXIV.  
Art. 244,  
see Art. 148.

In *G. W. Ry. Co. v. McCarthy*, 12 App. Cas. 218; 56 L. J. P. C. 33, it was held, that where the consignor had the option of sending the cattle at a fair alternative rate, it was a reasonable condition that the railway company should only be responsible for loss or injury by wilful misconduct, even though the company limited their liability to the amounts fixed by sect. 7 of the Traffic Act, 1854, where the cattle were carried at the higher rate. See *ante*, p. 153.



## PART VI.



## CHAPTER XXV.

## CARRIAGE OF PASSENGERS' LUGGAGE BY RAILWAY.

Ch. XXV.  
Art. 245.

**245.** A railway company are common carriers of passengers' personal luggage. *Munster v. S. E. Ry. Co.*, 27 L. J. C. P. 308; 4 C. B. (N. S.) 676; *Macrow v. G. W. Ry. Co.*, L. R. 6 Q. B. 612; 40 L. J. Q. B. 300; *Cohen v. S. E. Ry. Co.*, 2 Ex. D. 253; 46 L. J. Ex. 417. This liability is modified only where the passenger himself takes charge of his luggage in such a manner as to raise an implied condition that he shall himself take reasonable care of it and it is lost or damaged by his negligence. *Talley v. G. W. Ry. Co.*, L. R. 6 C. P. 44; 40 L. J. C. P. 9. But if the loss or damage is not sustained under such circumstances, their general liability as insurers will continue. *Richards v. L. B. & S. C. Ry. Co.*, 7 C. B. 839; *Le Conteur v. L. & S. W. Ry. Co.*, L. R. 1 Q. B. 54; 35 L. J. Q. B. 40; *G. W. Ry. Co. v. Bunch*, 13 A. C. 31; 57 L. J. Q. B. 361; see as to the principle, *Lovett v. Hobbs*, Show. 427.

The obligations of a railway company as common carriers of a passenger's personal luggage are qualified by the excepted risks incident to the contract of a common carrier. See *ante*, Chapter V., p. 37.

The propositions stated in this Article must now be taken to be the law, although there are some *dicta* to the effect that railway companies are not insurers of a passenger's personal luggage. See per Pollock, C. B., in *Stewart v. L. & N. W. Ry. Co.*, 33 L. J. Ex. 199, at p. 201; and per Willes, J., in *Talley v. G. W. Ry. Co.*, L. R. 6 C. P. at p. 51. Ch. XXV.  
Art. 245.

The weight of passengers' personal luggage which a railway company proposes to carry free is included in the scale of charges for the conveyance of passengers submitted by the railway companies in accordance with the Railways Act, s. 30.

The general scale submitted is:—

	lbs.
For first class passengers .....	150
For second class passengers .....	120
For third class passengers .....	100

See further as to the submission of the proposed charges for the conveyance of passengers and their luggage, Art. 279, *post*, p. 503.

Although the special Acts of railway companies provide that without extra charge it shall be lawful for every passenger by railway to take with him ordinary luggage, yet a railway company may run excursion trains for passengers only, without luggage. *Rumsey v. N. E. Ry. Co.*, 32 L. J. C. P. 244.

It will be noticed the railway companies have taken care in their special Acts expressly to limit the right of the passenger to "ordinary" luggage, which must be taken to mean the "personal" luggage of the traveller. *Post*, Arts. 246 and 248.

Where a railway company carried troops and their baggage, in India, under a written contract with the Government, which provided for the due supply of suitable goods wagons, and for special trains when required, and contained the following clause: "The baggage shall remain in charge of a guard provided by the troops, the company accepting no responsibility,"—it was held that this clause did not exempt the company from responsibility for damage caused by their own negligence. *Martin v. Gt. Indian Pen. Ry. Co.*, 37 L. J. Ex. 27.

**Ch. XXV.** In *Macrow v. G. W. Ry. Co.*, L. R. 6 Q. B. 612, Cockburn, C. J., said at pp. 617 *et seq.*: "The impossibility of travelling without the accompaniment of a certain quantity of luggage for (the personal comfort and convenience of the traveller has led from the earliest times to the practice on the part of carriers of passengers for hire of carrying, as a matter of course, a reasonable amount of luggage for the accommodation of the passenger, and of considering the remuneration for the carriage of such luggage as comprehended in the fare paid for the conveyance of the passenger. Under the older system of travelling by stage coaches, canal boats, or other vessels, the amount of luggage to be thus carried free of charge was commonly made part of the contract by express stipulation or notice from the carrier. Under the modern system of railway conveyance, it is fixed and regulated by the various Acts of Parliament under which railways have been established.

"The provision fixing the amount of luggage which the traveller shall be entitled to take with him free of charge has a twofold object: first, that of securing to the traveller the conveyance of a reasonable amount of luggage; secondly, that of protecting the carrier from all dispute as to the amount of luggage which the passenger may claim to have carried, as well as entitling the former to a proper remuneration for the carriage of luggage in excess of the quantity thus fixed by statute.

"Besides thus fixing the quantum of luggage which the passenger shall be entitled to have carried free of charge, the Railway Acts have, in conformity with the practice of carriers under the old system, taken care expressly to limit the right of the passenger to ordinary luggage, which must be taken to mean the personal luggage of the traveller.

"The conveyance of the personal luggage of the passenger being obviously for his convenience, and, therefore, accessory, as it were, to his conveyance, it may be thought that the liability of the carrier in respect of the safe conveyance of passengers' luggage should have been co-extensive only with the liability in respect

of the safety of the passenger. The law, however, is now too firmly settled to admit of being shaken, that the liability of common carriers in respect of articles carried as passengers' luggage is that of carriers of goods as distinguished from that of carriers of passengers; unless, indeed, where the passenger himself takes the personal charge of them, as in *Talley v. G. W. Ry. Co.*, 40 L. J. C. P. 90, in which case other considerations arise."

Ch. XXV.  
Art. 944.

Where a railway company made a bye-law to the effect that they "would not be responsible for the care of luggage, unless booked and paid for," it was held that the bye-law was null and void. *Williams v. G. W. Ry. Co.*, 10 Ex. 15; cf. also *G. W. Ry. Co. v. Goodman*, 21 L. J. C. P. 197.

A railway company are liable for luggage lost while being carried by their porters from a train to a cab. *Richards v. L. B. & S. C. Ry. Co.*, 7 C. B. 839.

As to the right of a passenger to take a dog for which he had taken a ticket in the passenger compartment with him, *vide Lawton v. G. W. Ry. Co.*, 37 T. L. R. 934.

**246.** Whatever a passenger takes with him for his personal use or convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or to the ultimate purpose of the journey, is considered to be personal luggage. *Macrow v. G. W. Ry. Co.*, L. R. 6 Q. B. 612; 40 L. J. Q. B. 300. Personal luggage does not extend to any articles carried for the purposes of business or trade. *Hudston v. Midland Ry. Co.*, L. R. 4 Q. B. 366; 38 L. J. Q. B. 213; and per Parke, B., in *Shepherd v. G. N. Ry. Co.*, 8 Ex. 30; 21 L. J. Ex. 286; nor to articles of furniture or household goods, per Cockburn, C.J., in *Macrow v. G. W. Ry. Co.*, *supra*, at p. 632 of the L. R.

**CH. XXV.  
Art. 246.**

"The Rates Tribunal shall, in addition to any other powers conferred upon them . . . have power to determine any questions that may be brought before them in regard to the following matters:—

"(h) The articles and things that may be conveyed as passengers' luggage." Railways Act, 1921, s. 28 (1).

This power is not to be exercised until the appointed day.

"Under the term 'luggage' may be comprised his clothing and everything required for his personal convenience, and perhaps even a small present, had he had such with him, or a book on the journey might also be included in that term; but . . . not . . . merchandise and materials intended for trade, and to be sold at a profit." Per Parke, B., in *Shepherd v. G. N. Ry. Co.*, ante, p. 439.

Documents and bank notes for use in certain causes in which the passenger was engaged as a solicitor, and which he took in his portmanteau when going by railway to attend the county court, were held not to be personal or ordinary luggage. *Phelps v. L. & N. W. Ry. Co.*, 34 L. J. C. P. 259. Byles, J., said, at p. 261: "I should doubt if a man's own title deeds and securities can be called 'ordinary luggage,' but when they belong to another person the case is still clearer."

A revolver, binocular glasses, and a flash lamp are "personal luggage" of an officer. *Jenkyns v. Southampton Steam Packet Co.*, [1919] 2 K. B. 135; 88 L. J. K. B. 965.

Pencil sketches of an artist, placed in his portmanteau, do not form part of his ordinary luggage (*Mytton v. Midland Ry. Co.*, 28 L. J. Ex. 385); nor does a violincello carried by a professional player for his professional and not personal use. *G. W. Ry. Co. v. Evans*, 38 T. L. R. 166.

A passenger cannot claim to have carried as ordinary personal luggage articles of such a size and shape that they cannot be

reasonably carried as luggage. *Hudston v. Midland Ry. Co.*, L. R. 4 Q. B. 366; 38 L. J. Q. B. 213. In that case the plaintiff claimed to have carried as luggage a child's toy called a spring horse, 78 lbs. in weight, and 44 inches in length, standing on a flat surface. In giving judgment, Lush, J., said, at p. 370: "The only definition I can think of, and one which is sufficient for this case, is, that the words of the statute (i.e., the company's special Act) describe a class of articles which are ordinarily or usually carried by travellers as their luggage." He then proceeded to hold that the dimensions and size of this spring horse took it out of this definition.

A bicycle is not "ordinary luggage," and therefore a passenger by train, without luggage, is not entitled to take with him, free of charge, a bicycle, not packed up, although of less weight than the weight of luggage allowed to be carried free of charge by the class in which he is travelling. *Britten v. G. N. Ry. Co.*, [1899] 1 Q. B. 243; 68 L. J. Q. B. 75.

**247.** A railway company are not liable for the loss of merchandise delivered to them by a passenger as his personal luggage to be carried free, unless the company, having an opportunity to know the contents of the package, see fit to accept it as luggage. *Cahill v. L. & N. W. Ry. Co.*, 13 C. B. (N. S.) 818; 31 L. J. C. P. 271; *Belfast & Ballymena Ry. Co. v. Keys*, 9 H. L. Ca. 556.

In the former of these two cases it was held that the mere fact that a package looks like merchandise, and is marked "glass," is not enough to fix the company with responsibility. Cockburn, C. J., said, at p. 820: "It is true that the package bore the semblance of a packet of merchandise: and it was marked 'glass.' But many packages which do not contain merchandise are so marked in order to secure their being handled with more

Ch. XXV. than ordinary caution. It is not found in the case that the  
Art. 147. company or their servants had any knowledge on the subject."

The railway company may none the less escape liability, although the passenger was ignorant of the rule that nothing but personal effects are carried free of charge. *Cahill v. L. & N. W. Ry. Co.*, 13 C. B. (N. S.) 818.

So, too, the fact that the package is removed from the passenger's compartment to the luggage van at the request of a servant of the company does not impose liability upon them. *Belfast and Ballymena Ry. Co. v. Keys*, 9 H. L. Ca. 556.

So, where a comedian took a hamper containing theatrical clothing and properties, which was lost during the journey, the company were held not liable, the goods not being personal luggage, and they having no notice of the contents of the hamper. *Gilbey v. G. N. Ry. Co.*, 36 T. L. R. 562.

In *Shepherd v. G. N. Ry. Co.*, 8 Ex. 30; 21 L. J. Ex. 286, it was held that if a passenger on a railway carry merchandise packed up with his personal luggage, the railway company are not responsible for the value of the merchandise if the luggage be lost from the train, but if the merchandise be so packed as to be obviously merchandise to the eye, the railway company will be responsible for the loss in the absence of any bargain to the contrary. Parke, B., in delivering judgment, said, at p. 288: "Had the railway company, with full notice of what the passenger was carrying, chosen to treat it as luggage, they would have been responsible for the loss; but their duty as common carriers was only to carry luggage, and not merchandise or articles wholly disconnected with personal luggage. If they had had notice, they might have refused to carry it without an additional payment, but they had no opportunity of acquiring this knowledge in this case. Whether this was done with any fraudulent intention it is not material to inquire, for if without any fraud the passenger has so conducted himself that the company were not apprised of the nature of what he was carrying, it is the same in effect as if a fraud had been intended."

**248.** If a railway company permit a passenger, Ch. XXV.,  
Art. 248. either on payment or without payment of an extra charge, to take more than the regulated quantity of luggage, or knowingly permit him to take, as personal luggage, articles that would not come under that denomination, they will be liable for their loss, though not arising from their negligence. Per Cockburn, C. J., in *Macrow v. G. W. Ry. Co.*, L. R. 6 Q. B. 612, 619. And a statement in the time-tables of a railway company that a certain class of passengers are allowed to take with them by passenger train a limited amount of luggage, other than ordinary passenger's luggage, "on condition that the company is relieved from all liability for loss, damage, misdelivery or delay," will not, in the absence of a signed contract within sect. 7 of the Railway and Canal Traffic Act, 1854, relieve the railway company from liability for negligence. *Wilkinson v. L. & Y. Ry. Co.*, [1906] 2 K. B. 619; [1907] 2 K. B. 222; 76 L. J. K. B. 801.

"If a railway company who, by their Act of Parliament, are bound, or by their regulations profess, to carry personal luggage free, choose to take as ordinary luggage that which they know to be merchandise, I quite agree that it is not competent to them, in the event of a loss, to claim exemption from liability on the ground that the article consists of merchandise and not of ordinary luggage." Per Cockburn, C. J., in *Cahill v. L. & N. W. Ry. Co.*, 13 C. B. (N. S.) 818, at p. 819; 31 L. J. C. P. 271.

**249.** Although a railway company are bound, by the terms of their special Act of incorporation, to permit passengers to take a certain amount of luggage



Ch. XXV.  
Art. 240.

free of charge, and as a general rule are not entitled to enforce any regulation at variance with such obligation, they are not, on that account, precluded from making special stipulations contrary to the provisions of such special Act with regard to the carriage of luggage by cheap or excursion trains. *Rumsey v. N. E. Ry. Co.*, 32 L. J. C. P. 244; 14 C. B. (N. S.) 641.

In that case Williams, J., said: "The question is whether the terms on which these excursion tickets are issued by the company can be enforced, so far as relates to the condition that passengers travelling with such tickets shall not be allowed to take luggage. I see nothing whatever to prevent it in the section of the Act of Parliament which is relied on. The defendants say that the bargain was that the plaintiff should give up his ordinary right of taking luggage as a first class passenger on condition of getting a cheaper ticket. There is nothing illegal in that." The section of the Act referred to by the learned judge was in the usual form.

The holder of a railway excursion ticket, expressed to be "issued subject to the conditions contained in the company's time and excursion bills," one of which conditions was, that "luggage under 60 lbs." should be carried "free, at passenger's own risk," was held bound, in the case of *Stewart v. L. & N. W. Ry. Co.*, 33 L. J. Ex. 199; 3 H. & C. 135, by the terms of this special contract.

This condition was not signed by the passenger, but was nevertheless held binding upon him. This case is therefore in effect overruled by *Cohen v. S. E. Ry. Co.* and *Wilkinson v. L. & Y. Ry. Co.*, post, Art. 256, p. 453.

**250.** The duty thrown upon the carrier by receiving the passenger and his luggage to be carried for reward is not founded upon contract and is independent of the

question by whom the reward is paid; and therefore a railway company are liable for the loss of his personal luggage to a servant whose fare has been paid by his master. *Marshall v. York, Newcastle, & Berwick Ry. Co.*, 11 C. B. 655; 21 L. J. C. P. 34. Ch. XXV.  
Art. 386.

The owner of luggage which has been accepted by a railway company, to be carried as the personal luggage of another person, has a right of action in tort against the railway company if his luggage is injured owing to their default. *Meux v. G. E. Ry. Co.*, [1895] 2 Q. B. 387; 64 L. J. Q. B. 657.

The facts in *Meux's Case* were these:—The plaintiff directed her servant to travel by the defendants' line from a station in the country to London. He went to the station with a portmanteau, in which was his livery, which belonged to the plaintiff. At the station he took his ticket, which he paid for with money supplied to him by the plaintiff. The portmanteau was handed into the custody of the defendants' servants, to be carried by them to town as passenger's luggage, and it was overturned in front of a train by one of the defendants' servants, and was damaged, and became useless to the plaintiff. The Court of Appeal decided the plaintiff had a good cause of action in tort against the railway company wholly irrespective of contract. In giving judgment in this case, A. L. Smith, L. J., said, at p. 394: "Her (the plaintiff's) goods were lawfully on the defendants' premises, and by their active negligence those goods have been damaged. That gives her a good cause of action in tort." It would appear that this decision must be taken to have overruled the judgment of the Court of Queen's Bench in *Becher v. G. E. Ry. Co.*, L. R. 5 Q. B. 241; 39 L. J. Q. B. 122, where it was held that the owner of a portmanteau which had been lost by the railway company's default while being carried as the personal luggage of his servant could not maintain an action.

Ch. XXV.  
Art. 240. See also Art. 289, *post*, p. 535, where the same principle, as applied to the carriage of passengers, is considered.

251. A railway company accepting passengers' luggage to be carried in a carriage with the passenger enter into a contract as common carriers, subject to this modification, that in respect of his interference with their exclusive control of his luggage, the company are not liable for any loss or injury occurring during its transit to which the act or default of the passenger has been contributory. *G. W. Ry. Co. v. Bunch*, 13 A. C. 31; 57 L. J. Q. B. 361.

Until this case (for the facts of which see p. 449, *post*) was decided in the House of Lords the ruling authority upon this point was *Bergheim v. G. E. Ry. Co.*, 3 C. P. D. 221; 47 L. J. Q. B. (App.) 318. In that case it was decided by the Court of Appeal that a railway company are not insurers of that portion of a passenger's luggage which is, at his request or with his consent, placed in the same carriage in which he travels or is about to travel; but they were liable for loss or injury to it caused by their negligence.

The Law Lords, in *Bunch's Case*, however, preferred the principle which was adopted in *Richards v. L. B. & S. C. Ry. Co.*, 7 C. B. 839; and *Talley v. G. W. Ry. Co.*, L. R. 6 C. P. 44; 40 L. J. C. P. 9; and the views expressed in those cases by Lord Truro, Willes, J., Keating, J., and Montagu Smith, J.

In *Talley's Case* it was held that if the passenger retain his luggage under his own personal care and control he is bound himself to take reasonable care of it, and he cannot charge the carrier with a loss caused by his own negligence.

That was an action by a passenger for not safely carrying his portmanteau, which formed his luggage, and the evidence was that the plaintiff had the portmanteau put into the same

carriage with him, and that in the course of the journey he got out for refreshment at Swindon, where the train stopped ten minutes, and upon returning failed to find his carriage, and completed his journey to London in another carriage in the same train. He afterwards obtained his portmanteau, but cut open and minus a portion of its contents, which had been stolen by someone in the carriage after the plaintiff had left it. Ch. XXV.  
Art. 541.

The jury negatived negligence on the part of the railway company's servants, and found that the plaintiff had by his negligence contributed to the loss. It was held that the general liability of the railway company was, under the circumstances, modified by the implied condition that the plaintiff should use reasonable care, and that, as the loss was occasioned by his neglect to do so, and would not have happened without such neglect, the company were not liable.

A railway company have no right to compel the passenger to take personal luggage in the carriage with him at his own risk. *Munster v. S. E. Ry. Co.*, 27 L. J. C. P. 308; 4 C. B. 676.

Following *Bunch's Case*, it was held in *Steers v. Mid. Ry. Co.*, 36 T. L. R. 703, that where a passenger had taken a sleeping berth and allowed his luggage to be put in it upon the assurance of an inspector of the railway company that it would be safe there, the company were liable for the loss of the luggage.

**252.** The liability of a carrier with respect to articles which remain under the entire personal control of a passenger during the journey, such as a watch and chain or money, is not that of an insurer, but is the same as his liability with respect to the passenger himself, namely, to exercise reasonable care only. *Richards v. L. B. & S. C. Ry. Co.*, 7 C. B. 839; 18 L. J. C. P. 251; *Smitton v. Orient Steam Navigation Co.*, 23 T. L. R. 359.

In *Smitton's Case* the articles in question consisted of a watch,

Ch. XXV. a sovereign-case containing money, and other articles usually  
Art. 338. carried by the passenger about his person; and in *Richards' Case*,  
Wilde, C. J., appears to have limited the application of the above  
rule to such articles, since in their case there is no delivery to or  
acceptance by the carrier.

**253.** The liability of a railway company as insurers of luggage commences from the moment when luggage is placed under the control of one of their servants for the purpose of putting it in transit: *Lovell v. L. C. & D. Ry. Co.*, 45 L. J. Q. B. 476; 34 L. T. 127; 24 W. R. 394, whether the servant is in fact on duty at the time or not, if he is in uniform and accepts the luggage: *Soanes v. L. & S. W. Ry. Co.*, 88 L. J. K. B. 524; 35 T. L. R. 267; provided that this is done a reasonable time before the departure of the train by which the passenger intends to travel. *G. W. Ry. Co. v. Bunch*, 13 A. C. 31; 57 L. J. Q. B. 361.

When a porter receives luggage at the entrance of a station for the purpose of labelling it and putting it in a train, he receives it as agent of the railway company, and the company is liable for its safety, although the intending passenger has not yet taken a ticket. *Lovell v. L. C. & D. Ry. Co.*, *supra*.

See also the next Article and notes thereto.

In *Lovell's Case* the passenger arrived at a station half an hour too early, and gave her luggage to a porter, who undertook to label it, and it was held that the luggage was thenceforward in the custody of the company as common carriers; and a notice by the company that "the company's servants are forbidden to take charge of any articles," and that "any article which a passenger

wishes to leave at a station should be deposited in a cloak room," did not apply to such a case.

CH. XXV.  
Art. 200.

To make the company liable it is not necessary that the intending passenger should have taken a ticket, or that the luggage should be labelled, but he must have given directions for it to be placed in transit. If an intending passenger, on arriving at a station, gives his portmanteau to a porter, and say merely the name of the station he is going to (*e.g.*, "Hull"), and the porter answers "All right!" this would, it seems, attach to the company their liability as common carriers; but if the luggage is given to the porter and nothing said on either side, the company is not liable if, before directions are given to place the luggage in transit, it is lost. See *Agrell v. L. & N. W. Ry. Co.*, unreported, but referred to in 34 L. T. 134, note (a). In that case the plaintiff, allowing his luggage to be taken from him by a porter, gave no instructions to the porter as to his destination; but the porter leaving, and no other porter coming forward, labelled his own luggage and then went off to the refreshment room. It was held that the plaintiff could not recover for the loss of his luggage.

Of. also *Leach v. S. E. Ry. Co.*, 34 L. T. 134.

In *Bunch's Case*, 13 A. C. 31; 57 L. J. Q. B. 361, it was decided in the House of Lords that it is within the scope of the duty of a railway porter to carry hand-luggage to and from the cabs and other conveyances.

The facts of that case were as follows:—The female plaintiff arrived at the Paddington Station of the defendants' railway at 4.20 P.M. on Christmas Eve with a bag and two other articles of luggage, in order to travel by the 5 P.M. train. A porter labelled the two articles and took all the luggage to the platform, the train not then being at the platform. The female plaintiff told the porter she wished the bag to be put into a carriage with her, and asked if it would be safe to leave it with him. He replied that it would be quite safe, and that he would take care of the luggage and put it into the train. She then went to meet her husband and get her ticket. Ten minutes after she had left the luggage

**CA. XXV.** she and her husband returned together to the platform and found  
**Art. 288.** that the two labelled articles had been put into the van of the train, but that the porter and the bag had disappeared. In an action in the County Court against the railway company for the loss of the bag, the judge found that the time when the luggage was entrusted to the porter was a reasonable and proper time before the departure of the train, and that the porter was guilty of negligence in not being in readiness to put the bag into the carriage when the female plaintiff returned, and held the company liable.

It was held by Lord Halsbury, L. C., and Lords Watson, Herschell, and Macnaghten (Lord Bramwell dissenting), that there was evidence upon which the County Court judge might reasonably find, first, that the bag was in the custody of the railway company for the purposes of present and not of future transit from the time when it was delivered to their porter until its disappearance; and secondly, that its loss was due to their negligence.

Lord Macnaghten said, at p. 56 of the L. R.: "The services rendered by railway porters in receiving passengers' luggage, in taking it to the platform, and putting it into the train, are part of the ordinary facilities for passenger traffic which the public nowadays expects from railway companies, and which railway companies for the most part hold themselves out as ready and willing to afford. These services are covered by the fare which the passenger pays for his journey. They are offered in view of the contract which a person who presents himself with luggage at a railway station presumably either has made or is about to make. The contract, as the case may be, runs from, or relates back to, the commencement of the journey; and the journey must, I think, be taken to commence, as regards passengers' luggage, at the time when the luggage is received by the company's servants for the purpose of the journey. Thenceforward the work done in taking the luggage to the platform, in putting it into the train, in conveying it to its destination, and there delivering it, must, I think, be regarded

under ordinary circumstances as one continuous operation to be performed under the contract. The contract is the ordinary contract of common carriers—a contract to carry securely.” Ch. XXV.  
Art. 288.

Where an officer travelling from Southampton to Ryde by one of the defendant company's steamers gave his luggage at Southampton to a man in porter's uniform, who took it on the steamer, with the concurrence of the defendants' servants, and placed it in the usual place for luggage, and it was lost, the defendants were held to have accepted liability as common carriers. *Jenkyns v. Southampton Steam Packet Co.*, [1919] 2 K. B. 135; 88 L. J. K. B. 965.

**254.** If a passenger entrusts luggage to a porter for deposit and custody, as distinguished from the physical handing over for the purpose of transit, the railway company are not liable for the loss of such luggage. Per Lord Halsbury, in *G. W. Ry. Co. v. Bunch*, 13 App. Cas. 31, at p. 37; 57 L. J. Q. B. 361; *Welch v. L. & N. W. Ry. Co.*, 34 W. R. 166.

In the latter case the intending passenger, having missed his train, asked a porter to take charge of his luggage until the next train, and the porter having agreed to do so, the passenger left the station and went to the billiard-room of an hotel, where he amused himself for an hour, returning to find his luggage missing. It was held that the porter was not the agent of the railway company to take charge of the luggage.

In *Hodkinson v. L. & N. W. Ry. Co.*, 14 Q. B. D. 228, the plaintiff arrived at a station on the defendants' railway with her luggage contained in two boxes, which were taken from the luggage-van by a porter in the employ of the company. The porter asked the plaintiff if he should engage a cab for her. In reply, she said she would walk to her destination, and would leave



**Ch. XXV.** her luggage at the station for a short time and send for it. The  
**Art. 254.** porter said, "All right; I'll put them on one side and take care of them," whereupon the plaintiff quitted the station, leaving her boxes in the custody of the porter. One of them was lost. It was held that the transaction amounted to a delivery of the luggage by the company to the plaintiff, and a re-delivery of it by her to the porter as her agent to take care of it, and that consequently the company were not responsible for the loss. Lord Coleridge, in giving judgment, said: "Possibly the porter may be responsible for the loss, but the company clearly are not. *Patscheider v. G. W. Ry. Co.* is clearly distinguishable; there the plaintiff had no opportunity of taking possession of her box."

**255.** A railway company, when carrying a passenger's personal luggage free of charge in the train by which the passenger is travelling, are entitled to the protection of the Carriers Act, 1830. *Marrow v. G. W. Ry. Co.*, L. R. 6 Q. B. 612; 40 L. J. Q. B. 300; *Dyke v. S. E. & C. Rys. Managing Committee*, 17 T. L. R. 651; *Casswell v. Cheshire Lines Committee*, 76 L. J. K. B. 734; 23 T. L. R. 580.

A notice in the time-tables of a railway company stating that a certain amount of passengers' luggage will be carried free, refers only to the transport of luggage generally, and does not imply that the railway company agree to require no extra charge and, at the same time, to accept liability in respect of articles contained in such luggage which are included within the Carriers Act, 1830. *Casswell v. Cheshire Lines Committee*, *ante*.

As to the Carriers Act, see *ante*, Chapter VI., p. 49.

**256.** Passengers' personal luggage and other articles which the railway company allow a passenger to carry as such are within sect. 7 of the Railway and Canal Traffic Act, 1854, and therefore a railway company are liable for loss of or injury to such luggage in the receiving, forwarding, or delivering thereof, occasioned by the neglect of such company or their servants, notwithstanding any notice or condition made and given by them in anywise limiting such liability. Any special contract or condition limiting the liability of the company in respect of the loss of or injury to such luggage must be just and reasonable, and must be signed as required by that section in order to protect the company, even though such luggage consists of articles which the railway company are under no obligation to carry in the manner actually employed. *Cohen v. S. E. Ry. Co.*, 2 Ex. D. 253; 46 L. J. Ex. 417; *Wilkinson v. L. & Y. Ry. Co.*, [1906] 2 K. B. 619; [1907] 2 K. B. 222; 76 L. J. K. B. 801.

CH. XXV.  
ART. 256.

The facts in *Cohen's Case* were these—The plaintiff took a ticket at an office of the defendants in Boulogne for a through journey from Boulogne to London, by defendants' steamer to Folkestone, and thence by their railway to London. On the ticket was printed: "Each passenger is allowed 120 lbs. of luggage free of charge." "The company is in no case responsible for luggage of the passenger travelling by this through ticket of greater value than 6l." Plaintiff had a box with her, which was given in charge of defendants' servants, and in transferring it from the boat to the train it fell into the sea owing to the negligence of defendants' servants. It was held by the Court of Appeal that, assuming the contract to be governed by English law, the condition on the ticket was void by reason of sect. 7 of the Railway and Canal Traffic Act, 1854, and sect. 16 of the Regulation of Railways Act, 1868.

**CH. XXV.** In the above case of *Wilkinson v. L. & Y. Ry. Co.*, the railway  
**Art. 356.** company published a notice in their time-tables stating that third class passengers were allowed 100 lb. per passenger of personal luggage only (not being merchandise or other articles carried for hire or profit) free of charge, and that "commercial traders . . . are allowed to take with them, free of charge," certain quantities of luggage "on the condition that the company is thereby relieved from all liability for loss, damage, misdelivery, or delay."

The plaintiffs were commercial travellers, and were travelling in the ordinary course of their business from H. to Belfast by means of the railway company's railway and steamer. On arrival at Fleetwood the company's servants took charge of a skip belonging to the plaintiffs, containing samples, and being within the free allowance weight. On arriving at Belfast the plaintiffs were informed that the skip had been lost, having been dropped into the sea by the defendants' servants.

In an action brought to recover the value of the skip the railway company claimed to be relieved from liability under the condition published in their time-tables, but the Court of Appeal, affirming the decision of the Divisional Court, held that even though the plaintiffs had knowledge of such condition the railway company could only relieve themselves from their common law liability as carriers by means of a signed contract within sect. 7 of the Traffic Act, 1854, and that they therefore were, under the circumstances of the case, liable to the plaintiffs for the loss of the skip.

The provisions of sect. 7 of the Railway and Canal Traffic Act, 1854, do not apply to goods received not in the capacity of carriers, as luggage left in the cloak-room after the completion of the railway journey. *Van Toll v. S. E. Ry. Co.*, 31 L. J. C. P. 241.

A regulation of a railway company that they will not be responsible for any passenger's luggage unless fully and properly addressed with the name and destination of the owner, is not a just and reasonable condition within sect. 7 of the Railway and

Canal Traffic Act, 1854. *Cutler v. North London Ry. Co.*, 19 Q. B. D. 64. In that case the plaintiff was a season ticket holder on the defendants' line from B. to K. under a special contract, by which he undertook to abide by all the rules, regulations, and bye-laws of the defendants. One of such regulations was that the defendants would not be responsible for any passenger's luggage, unless fully and properly addressed with the name and destination of the owner. The plaintiff having with him a bag which was not so addressed, saw it labelled for K. by one of the defendants' servants; he left the train at C., an intermediate station, and proceeded to K. by a subsequent train; on his arrival at K. his bag was missing. There was no evidence that the bag ever reached K. It was held that the regulation of the defendants was not a just and reasonable condition within sect. 7 of the Railway and Canal Traffic Act, 1854, and could not be enforced against the plaintiff.

ch. XXV.  
Art. 202,

**257.** As from the appointed day a railway company issuing a ticket for the conveyance of a passenger partly by land and partly by water will be entitled to the benefit of the Carriers Act, 1830, in respect of the entire journey. Railways Act, 1921, s. 56 (1) and Sched. 6.

Until the appointed day they can only claim the benefit of the Carriers Act if they prove that the loss or damage took place during the land portion of the transit. *Le Conteur v. L. & S. W. Ry. Co.*, L. R. 1 Q. B. 54; 35 L. J. Q. B. 40; *L. & N. W. Ry. Co. v. J. P. Ashton & Co.*, [1920] A. C. 84; 88 L. J. K. B. 1157.

Where a railway company by through booking contract to carry any luggage from place to place partly by railway and partly by sea, a condition exempting the company from liability for any loss or

CH. XXV.  
Art. 297.

damage which may arise during the carriage of such luggage by sea. from the act of God, the King's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, shall, if published in a conspicuous manner in the office where such through booking is effected, and if printed in a legible manner on the receipt or freight note which the company gives for such luggage, be valid as part of the contract between the consignor of such luggage and the company in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such condition. Regulation of Railways Act, 1868, s. 14.

As to the appointed day, see *ante*, pp. 221—2.

“The legislature foresaw that injustice might be done to the company in respect of carriage by sea; they are liable to accidents and losses by the dangers of the sea to which they are not liable by land, and if they were subject to a carrier's liability for loss of luggage, which we assume they would be, it would be hard upon them; therefore the legislature has expressly provided for that by another clause, they can, by putting up a notice in the office, save and protect themselves against those extraordinary liabilities against which parties protect themselves by the ordinary bill of lading, that is, against losses by the dangers of the sea, &c. Therefore they can protect themselves from losses by the dangers of the seas; but having so treated the liability by sea, the legislature says that they shall not be subject to the same rule when they carry by railway, and they cannot put unreasonable conditions upon a passenger which shall prevent him from recovering for the loss of his luggage.” *Per Mellish, L. J.*, in *Cohen v. S. E. Ry. Co.*, 2 Ex. D. 253, at p. 261.

Sec. 14 of the Regulation of Railways Act, 1868, only applies to through-booking contracts in the ordinary course of business where a payment is made. Where a passenger and luggage are carried gratuitously the conditions mentioned in the above section need not be complied with by the railway company. *The Stella*, [1900] P. 161; 69 L. J. P. 70. Ch. XXV.  
Art. 297.

**258.** A railway company may, by special contract, exempt themselves from liability for loss of passengers' luggage occurring on a railway not belonging to or worked by themselves, the Railway and Canal Traffic Act, 1854, s. 7, applying only to the traffic on a company's own line. *Aldridge v. G. W. Ry. Co.*, 15 C. B. (N. S.) 582; *Zunz v. S. E. Ry. Co.*, L. R. 4 Q. B. 539; 38 L. J. Q. B. 209. But where a railway company issue a through ticket by which the passenger is to be carried partly on their own line and partly on that of another company, they, as the contracting company, are liable for the loss of such passenger's luggage unless they can prove that the luggage was in fact handed over to another railway company. *Kent v. Midland Ry. Co.*, L. R. 10 Q. B. 1; 44 L. J. Q. B. 18; *Mahony v. Waterford, &c. Ry. Co.*, [1900] 2 Ir. R. 273.

The facts in *Zunz's Case* were these:—Z. took a through ticket from the Charing Cross station of the South Eastern Railway Company to Paris: the ticket was in three coupons—(1) from London to Dover; (2) from Dover to Calais; (3) from Calais to Paris. Upon the ticket was printed the following condition:—“The company is not responsible for loss or detention of or injury to luggage of the passenger travelling by this through ticket, except while the passenger is travelling by the company's trains or boats.” His luggage comprised a portmanteau, which was

Ch. XXV. registered through to Paris. The portmanteau was lost on the  
Art. 288. journey between Calais and Paris. In an action for the loss, it was held that the Railway and Canal Traffic Act, 1854, only applied to the traffic of the company on their own line, and therefore the company was at liberty to make the special contract contained in the ticket.

Where a railway company issued a through ticket which had on it the words, "This ticket is issued subject to the regulations and conditions stated in the company's time tables and bills"; and there were notices in the booking office, and also on the company's time tables, to this effect:—"The company does not hold itself responsible for any delay, detention, or other loss or injury whatsoever arising off its lines, or from the acts or default of other parties;" it was held that, upon the true construction of the condition, the luggage could not be said to be off the defendants' line until it was out of their custody, and in the custody of some person responsible for its loss. *Kent v. Midland Ry. Co.*, *ante*, p. 457.

259. Where it can be proved that the luggage has been handed over by the contracting company to another railway company, such latter company, while actually carrying the passenger and his luggage, so far as concerns their own line, and their own acts or omissions, are under the same obligations in reference to the safety of the passenger's luggage as they would have been if they had directly contracted with him. *Hooper v. L. & N. W. Ry. Co.*, 50 L. J. C. P. 103.

Where it is equally probable that luggage has been lost off the line or premises of a railway company as on them, the onus of proof lies upon the plaintiff seeking to make the railway company responsible for

such loss. *Mid. Ry. Co. v. Bromley*, 17 C. B. 372; 25 L. J. C. P. 94. See also *Gilbart v. Dale*, 5 Ad. & E. 543. Ch. XXV.  
Art. 222

It appeared in *Hooper's Case* that the Great Western Railway Company issue through tickets from Stourbridge on their line to Euston (*viâ* Birmingham) on the defendants' line. The journey from Stourbridge to Birmingham is by the Great Western Railway, and from Birmingham to Euston by the defendants' railway. The plaintiff travelled with one of these tickets, and his portmanteau was labelled and carried in the van of the Great Western Railway Company as far as Birmingham. At Birmingham he changed into the defendants' train, and his portmanteau was seen to be transferred into the van of the defendants' train; but at Euston it was not forthcoming, and was not recovered for three months afterwards, when its contents were found injured by the corruption of a brace of pheasants which the plaintiff had packed inside the portmanteau. The plaintiff having sued the defendant company for the delay and injury to his goods, it was held that the action was maintainable, for the defendants, having received the portmanteau to forward it, had committed a breach of duty in neglecting to do so, for which they were responsible, apart from any question of contract.

There was no evidence to show to what point the portmanteau was labelled, but it would seem that it must have been labelled to Euston.

Lindley, J., in delivering judgment, said, at p. 105 of the Report:—"The plaintiff, no doubt, entered into an express contract with the Great Western Railway Company to carry him and his luggage to Euston; at Birmingham it was transferred into the van of the defendant company. Whether there would be an implied contract with the defendant company may be a question of difficulty, but, as a matter of fact, the portmanteau was lawfully in their charge, and the fact of its not being forthcoming at Euston involves the default of some one of the defendants' servants. The



**Ch. XXV.** defendant company, having received the portmanteau, are responsible for its loss, in accordance with the principle of *Foulkes v. Met. Ry. Co.* (*post*, p. 529). I am unable to distinguish that case from the present."

Damages may be recovered against a railway company for unreasonable delay in forwarding a passenger's luggage. *Ibid.*

In *Mid. Ry. Co. v. Bromley*, 17 C. B. 372, 25 L. J. C. P. 94, a portmanteau was delivered to a porter of the railway company to be conveyed from their station at Bristol to an adjacent station of the B. & E. Railway Company. The plaintiff, the owner of the portmanteau, was not travelling with a through ticket available over both lines of railway, and his ticket over the appellant company's line was to Bristol only. The porter put the portmanteau on a truck with other luggage, and the plaintiff afterwards saw the porter and the truck at the other station, but did not in fact see his portmanteau after leaving the appellant company's station. It was held that, it being equally probable that the loss had occurred after the portmanteau had been delivered to the B. & E. Co., the plaintiff must prove that such loss was due to the default of the appellant company, and that he, having failed to do this, must be nonsuited.

**260.** When luggage has been given into the custody of the railway company's servants for transit, the passenger is not bound to inquire after it at any point where it is necessary to remove it from one train to another, or until it reaches its destination, and the company, having once accepted it for conveyance, cannot afterwards plead the want of an address for the purpose of avoiding their liability for its loss. *Campbell v. Cal. Ry. Co.*, 14 Sess. Ca. (2nd Ser.) 806.

In that case the plaintiff took a ticket at Glasgow for Edin-

burgh, and gave his portmanteau into the custody of a railway porter, informing him of its destination. The portmanteau was put into the van at Glasgow, but no further trace of it was found. There was no address upon it, and the passenger did not inquire after it on changing carriages at a junction, where the luggage was shifted from one train to another. The company were held liable for the loss.

Ch. XXV.  
Art. 300.

In *Ehinger v. S. E. & C. Ry. Co. & Pullman Car Co.*, 38 Times L. R. 678, the plaintiff was a passenger upon the line of the first defendants, and had taken an additional ticket from the second defendants, entitling her to travel in a Pullman car which formed part of the train between London and Dover. The Pullman car ticket stated that that company accepted no liability for passengers' luggage, and it was held that all that was necessary had been done to bring that condition to the plaintiff's notice. At Dover the plaintiff took a seat in the Pullman car, but an official (of one or other of the defendants) refused to allow her to take her suit-case with her, and directed a porter to put it in the vestibule at the end of the car. It was lost, and the railway company were held liable, because they had contracted as insurers of passengers' luggage, except where the loss was caused by the passenger's own default, but the Pullman Car Company were not liable.

**261.** It is the duty of a railway company with regard to a passenger's luggage which travels by the same train with him, but not under his control, to have it ready at its destination for delivery upon the platform at the usual place of delivery until the owner, in the exercise of due diligence, can receive it: and the liability of the company as carriers does not cease until a reasonable time has been allowed to the owner to claim it. *Patscheider v. G. W. Ry. Co.*,

Ch. XXV. 3 Ex. D. 153; *Firth v. N. E. Ry. Co.*, 36 W. R.  
Art. 201. 467.

Where a railway company employ porters at their stations to convey passengers' luggage from the train to the carriages or hired vehicles of the passengers, the liability of the company as carriers continues until the porters have discharged their duty. *Richards v. L. B. & S. C. Ry. Co.*, 7 C. B. 839; 18 L. J. C. P. 251; *Butcher v. L. & S. W. Ry. Co.*, 16 C. B. 13; 24 L. J. C. P. 137.

If such is the usual practice of the company, they are bound, upon a passenger's arrival at his destination, to place his luggage upon a cab, if he requires them to do so; and where such a practice prevails, the company's responsibility continues until the whole luggage has been delivered on to the cab.

In *Butcher's Case*, *ante*, a passenger on the arrival of the train got out of the railway carriage on to the platform with a part of his luggage, a small hand-bag, in his hand, which he gave to one of the company's porters to take to a cab, and the porter lost it; the company were held liable as for a non-delivery of the bag, it not being found by the jury that the passenger, by taking the bag into his own possession on the platform, had accepted that as a performance of the company's contract to deliver, according to their usual practice, into a cab.

But where a passenger has claimed his luggage and agreed with a porter for him to put it on one side and take charge of it, the railway company have no liability, as the porter had then ceased to be acting as the company's agent. *Hodkinson v. L. & N. W. Ry. Co.*, 14 Q. B. D. 228. For the facts of this case, see p. 451, *ante*.

"I think that if a traveller by a railway is dissatisfied with his mode of travelling, he may at any point stop and require that his luggage should be delivered up to him." *Per Martin, B.*, in

*Scothorn v. South Staffordshire Ry. Co.*, 22 L. J. Exch. 121, at p. 124. Ch. XXV.  
Art. 261.

A carrier has a lien on the luggage of a passenger for his fare.  
*Wolf v. Summers*, 2 Camp. 631.

**262.** A railway company are only liable as ordinary warehousemen for luggage left at a "cloak-room" or "left luggage office." But a railway company are not bound to receive luggage into their warehouse upon the ordinary liability of warehousemen, and they usually further limit their liability by conditions printed on the ticket given to the depositor at the time. There is no rule or presumption of law that a person is bound by the conditions contained in a document thus delivered to him; but it is a question of fact in each case whether they have been brought to his notice. *Henderson v. Stevenson*, L. R. 2 Sc. App. 470; *Van Toll v. S. E. Ry. Co.*, 31 L. J. C. P. 241; 12 C. B. (N. S.) 75.

If the person receiving the ticket did not see or know that there was any writing on the ticket, he is not bound by the conditions.

If he knew there was writing, and knew or believed that the writing contained conditions, he is bound by the conditions.

If he knew there was writing on the ticket, but did not know or believe that the writing contained conditions, nevertheless he will be bound if the delivering of the ticket to him in such a manner that he can see that there was writing upon it, is, in the opinion of the jury, reasonable notice that the writing contained conditions. Per Mellish, L.J., in *Parker v.*

Ch. XIV.  
Art. 203.

*S. E. Ry. Co.*, 2 C. P. D. 416, at p. 423; 46 L. J. C. P. 768; *Harris v. G. W. Ry. Co.*, 1 Q. B. D. 515; 45 L. J. Q. B. 729. See also *Richardson, &c. v. Rowntree*, [1894] A. C. 217; 63 L. J. Q. B. 283; 70 L. T. 817; *Acton v. Castle Mail Packet Co.*, 73 L. T. 158.

A cloak-room is a "reasonable facility" for the receipt and forwarding of traffic which railway companies are bound to afford under sect. 2 of the Railway and Canal Traffic Act, 1854. The railway company have a lien upon goods deposited in a cloak-room belonging to them for receiving and warehousing them, not only against the person depositing the goods but also against the owner. *Singer Manufacturing Co. v. L. & S. W. Ry. Co.*, [1894] 1 Q. B. 833; 63 L. J. Q. B. 411.

In *Parker v. S. E. Ry. Co.*, *supra*, the plaintiff deposited his bag in the cloak-room of a station on the defendants' railway, and paid 2d. He received in return a printed ticket, bearing on the face of it a receipt for one article, and at the bottom the words "See back." At the back of the ticket were the words, "The company will not be responsible for any package exceeding the value of 10l." The same conditions were also printed on a placard hung up in the cloak-room. In an action against the company for the loss of the bag while thus in their cloak-room, the plaintiff claimed more than 10l. for the value of the bag and its contents. The defendants resisted the claim on the ground that they were relieved from responsibility by the above conditions. The Court of Appeal held that the proper question for the jury was, whether the defendants had done what was reasonably sufficient to give the plaintiff notice of the condition; and that, if that question were answered in the affirmative, judgment should be given for the defendants. Mellish, L. J., said, at

p. 423: "The railway company, as it seems to me, must be entitled to make some assumptions respecting the person who deposits luggage with them. I think they are entitled to assume that he can read, and that he understands the English language, and that he pays such attention to what he is about as may be reasonably expected from a person in such a transaction as that of depositing luggage in a cloak-room. The railway company must, however, take mankind as they find them, and if what they do is sufficient to inform people in general that the ticket contains conditions, I think that a particular plaintiff ought not to be in a better position than other persons on account of his exceptional ignorance, stupidity, or carelessness; but if what the railway company do is not sufficient to convey to the minds of people in general that the ticket contains conditions, then they have received goods on deposit without obtaining the consent of the persons depositing them to the conditions limiting their liability."

Ch. XXV.  
Art. 288.

In *Henderson v. Stevenson*, *ante*, p. 463, a passenger paying for and taking a ticket for an ordinary journey for himself and luggage was held not to be bound by a condition that the company were not liable for losses of any kind, which was printed on the back of the ticket, without any reference on the face, and which he did not in fact read, and which was not otherwise brought to his notice.

On the other hand, where a passenger by sea from Hull to Archangel was given a ticket which had a condition on its face that the defendants would not be responsible for loss of or damage to luggage or for personal injuries arising from any neglect of the master, it was held that the defendants had done all that was reasonably necessary to give the plaintiff notice of the condition. *Cooke v. Wilson*, 32 T. L. R. 160.

A passenger, on his arrival at a railway station in the evening, left a large and heavy trunk with the porter at the left-luggage office, and in return for it got a receipt, bearing on the face, "The company only receive the within-mentioned articles upon the con-

**Ch. XXV.** ditions expressed on the back of this ticket." The third condition  
**Art. 302.** upon the back was that when any "article deposited in the company's cloak-room or warehouse" exceeding the value of 5*l.* was lost, the company would not be liable, unless at the time when the package was delivered its true value was declared and a corresponding additional charge paid. A notice to the same effect was likewise posted inside the office. No verbal reference was made to the terms of the conditions. Owing to press of traffic the trunk was left by the company's officials upon the station platform, immediately outside the left-luggage office, and had disappeared next day. The value exceeded 5*l.* and had not been declared. The Court of Session held that the railway company were liable for the loss, as they were not in a position to enforce the condition above specified, the article not having been "deposited in the company's cloak-room or warehouse." *Hendon v. Cal. Ry. Co.*, 7 Sess. Ca. (4th Ser.) 966.

The facts in the English case of *Harris v. G. W. Ry. Co.*, 1 Q. B. D. 515; 45 L. J. Q. B. 729, differ from *Hendon's Case*. In the English case, the goods were deposited in a vestibule and not left on the open platform, and though they were stolen owing to the negligence of the company's servants, a majority of the judges held that the conditions protected the defendants, although the luggage had not been actually placed in the cloak-room. Cf. also *Lyons v. Cal. Railway*, [1909] S. C. 1185; and *Gibaud v. G. E. Ry. Co.*, [1921] 2 K. B. 426.

In *Van Toll v. S. E. Ry. Co.*, 31 L. J. C. P. 241, the plaintiff, after travelling by the line of a railway company, deposited her bag, containing wearing apparel and jewellery of the value of 20*l.*, at the cloak-room of the railway station. On so depositing the bag the plaintiff paid the charge of 2*d.*, and received a ticket, on the back of which was printed: "The company will not be responsible for articles left by passengers at the station, unless the same be duly registered, for which a charge of 2*d.* per article will be made, and a ticket given in exchange; and no article will be given up without the production of the ticket or satisfactory evidence

of the ownership being produced. A charge of 1*d.* per diem, in addition, will be made on all articles left in the cloak-room for a longer period than twenty-four hours. The company will not be responsible for any package exceeding the value of 10*l.*" It did not appear whether the plaintiff read this notice on the ticket, but she brought the ticket to the cloak-room when she returned there for the bag. It was held that the Railway and Canal Traffic Act, 1854, s. 7, did not apply, as the company did not receive the bag in the capacity of carriers. It was also held that the inference from the above facts was that the plaintiff assented to the terms of the notice on the ticket, and that therefore, as the value of the articles exceeded 10*l.*, the company were not liable for their loss, although occasioned by the company's negligence.

Ch. XXV.  
Art. 908.

In *Roche v. Cork, Blackrock & Passage Ry. Co.*, 24 L. R. Ir. 250, a bag, containing 10*l.* in money, was deposited in the cloak-room of the company's station. The owner paid 1*d.*, and obtained a ticket acknowledging the receipt of the bag, but not containing any conditions restricting the company's liability. He did not inform the clerk that the bag contained money. There was not, in the opinion of the Court, any negligence in the manner in which the bag was fastened. The money was abstracted while the bag was in the cloak-room. It was held that the company were liable for the amount.

A condition upon a cloak-room ticket issued by a railway company that they "will not be responsible for any package exceeding the value of 10*l.*" protects the company from liability, not only for the loss of an article deposited in the cloak-room, but also for damage or injury thereto while in their custody. *Pratt v. S. E. Ry. Co.*, [1897] 1 Q. B. 718; 66 L. J. Q. B. 418.

The word "loss" in the conditions printed on a cloak-room ticket includes a misdelivery by the railway company's servant to a wrong person with the consequent loss of the article deposited to the true owner. *Skipwith v. G. W. Ry. Co.*, 59 L. T. 520.

In *Singer Manufacturing Co. v. L. & S. W. Ry. Co.*, [1894] 1 Q. B. 833; 63 L. J. Q. B. 411, the hirer of a sewing-machine



Ch. XXV. under a subsisting hire and purchase agreement deposited it in a  
Art. 262. cloak-room belonging to the railway company. He left it there for five months, and then, having made default in paying the rent due under his hire and purchase agreement, sent the plaintiffs the cloak-room ticket.

The plaintiffs applied to the railway company for the delivery of the sewing-machine, but the railway company refused to deliver the machine until their charges which were admittedly owing under the conditions indorsed on the cloak-room ticket were paid, and this the plaintiffs refused to do. The Divisional Court (Mathew and Collins, J.J.) held that the railway company were entitled to retain the machine until their charges were paid, not only as against the original depositor, but also as against the owners, *i.e.*, the plaintiffs.

There is an implied contract on the part of a railway company receiving articles for deposit in a cloak-room that, in the absence of notice, such articles shall be delivered to the owner within a reasonable time after demand and on any day, including Sunday. *Stallard v. G. W. Ry. Co.*, 2 B. & S. 419; 31 L. J. Q. B. 137.

No damages beyond the actual value of the thing deposited can be recovered. *Anderson v. N. E. Ry. Co.*, 4 L. T. 216.

The fact that a condition on a railway cloak-room ticket is unreasonable, does not prevent the railway company from relying on it unless it is so extravagant as to amount to fraud. *Gibaud v. G. E. Ry. Co.*, [1920] 3 K. B. 689; 36 T. L. R. 884.

## PART VII.

### CARRIAGE OF PASSENGERS BY RAILWAY.

#### CHAPTER XXVI.

##### PROVISION OF TRAINS AND ACCOMMODATION FOR PASSENGERS.

##### I.—BY STATUTE.

**263.** Every railway company shall, according to Ch. XXVI.  
Art. 263. their powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic (which, by the interpretation clause, includes passengers and their luggage) upon and from the railway (which, by the interpretation clause, includes station) belonging to or worked by such company. Railway and Canal Traffic Act, 1854, s. 2.

The jurisdiction to determine whether there is a statutory right to demand from a railway company a facility or privilege belongs exclusively to the Railway Commissioners. *Perth General Station Committee v. Ross*, [1897] A. C. 479; 66 L. J. P. C. 81.

As to reasonable facilities, see *ante*, Chap. XXI. p. 312.

Provision is now made by the Railways Act, 1921, s. 16, for the Railway and Canal Commissioners to order the railway companies to afford such "reasonable railway services, facilities and conveniences" as may be by them specified. See further, p. 317, *ante*.

Ch. XXVI.  
Art. 263. In *S. E. Ry. Co. v. Railway Commissioners and Corporation of Hastings*, 6 Q. B. D. 586; 50 L. J. Q. B. 201, the Court of Appeal held that the Commissioners had power to make an order to increase the accommodation for the delivery of tickets at a railway station.

The Railway Commissioners will order additional trains to be run if a strong or clear case of its being reasonable to do so is made out. *Innes v. L. B. & S. C. and L. & S. W. Ry. Cos.*, 2 Ry. & Can. Ca. 155.

The Railway Commissioners have, under sect. 2 of the Railway and Canal Traffic Act, 1854, jurisdiction to hear and determine a complaint against a railway company for not according to their powers affording all reasonable facilities for receiving, forwarding, and delivering passengers at and from any of their stations which are used by the company for passenger traffic. *S. E. Ry. Co. v. Railway Commissioners and Corporation of Hastings*, 6 Q. B. D. 586; 50 L. J. Q. B. 201; *ante*, p. 319.

As to the admission of public vehicles into a railway station, see Art. 227, p. 412.

"It may very well be that as to passenger traffic facilities under sect. 2 of the Railway and Canal Traffic Act, 1854, all that is required in the way of facilities is that proper carriages shall be provided, and trains despatched at convenient times, and at reasonable rates of speed, because, as to all other matters, the passenger can help himself." Per Mr. Commissioner Miller in *Distington Iron Co. v. L. & N. W. Ry. Co. and others*, 6 Ry. & Can. Ca. 108, at p. 115.

These cases must now, of course, be considered subject to the Railways Act, 1921, s. 16, *ante*, p. 317.

A passenger desiring to use an ordinary train for part of a journey, for which he has taken a through ticket entitling him to travel by express, is not entitled to any deduction from the through fare on account of the difference of the service. *City of Dublin Steam Packet Co. v. L. & N. W. Ry. Co.*, 4 Ry. & Can. Ca. 10.

Provision is also made by the Traffic Act, 1854, s. 2, that a

railway company shall give no undue preference to any particular person. That applies as well to passengers and their luggage as to goods. See further, pp. 373—4, *ante*. Ch. XXVI.  
Art. I<sup>st</sup>

**264.**—“(1) For the purpose of moving by railway on any occasion of the public service—

“(a) Any of the officers or men in or belonging to Her Majesty’s navy or royal naval volunteers, and any other officers or men under the command or government of the Admiralty; and

“(b) Any of the officers or soldiers in Her Majesty’s regular reserve or auxiliary forces (within the meaning of the Army Act, 1881, or any Act amending the same) for the time being subject to military law; and

“(c) Any officers or men of any police force;

“(All and any of which officers, soldiers, and men are in this Act called ‘the forces’);

“Every railway company shall, on the production of a route duly signed for the conveyance of the forces, provide conveyance for them and their personal luggage, and also for any public baggage, stores, arms, ammunition, and other necessaries and things, whether actually accompanying the forces or not, at all usual times at which passengers are conveyed by the company, on such terms as may be agreed on between the railway company and the Secretary of State, Admiralty, or police authority, and subject to or in default of agreement on the following terms:—

“(i.) The passenger carriages provided shall be of such classes in use on the railway, and in such proportions, as specified in the route, all carriages

CL. XXVI.  
Art. 204.

being protected from the weather and having proper accommodation:

“(ii.) The fares shall not exceed the following proportions of the fares charged to private passengers for the single journey by ordinary train in the respective classes of carriages specified in the route, that is to say, if the number of persons conveyed is less than one hundred and fifty, three-fourths; and if the number is one hundred and fifty or more, then for the first one hundred and fifty, three-fourths, as for four officers and one hundred and forty-six soldiers or other persons; and for the numbers in excess of the said one hundred and fifty, one half:

“(iii.) This section shall apply to such wives, widows, and children of members of the forces as are entitled to be conveyed at the public expense, in like manner as if they were part of the forces, but children less than three years old shall be conveyed free of charge, and the fare for a child more than three and less than twelve years old shall be half the fare payable under this section for an adult:

“(iv.) One hundredweight of personal luggage shall be conveyed by the railway company free of charge for every one conveyed under this section who is required by the route to be conveyed first-class, and half a hundredweight for every other person conveyed; and any excess of weight shall be conveyed at not more than two-thirds of the rate charged to the public for excess luggage:

“(v.) The said public baggage, stores, arms, ammunition, necessaries, and things shall be carried

at rates not exceeding twopence per ton per mile, the assistance of the forces to be given when available in loading and unloading the same: CH. XXVI.  
Art. 204.

“(vi.) Provided that the company shall not be bound under this section to carry gunpowder or other explosive or combustible matters, except on terms agreed upon between the company and the Admiralty, or one of Her Majesty’s principal Secretaries of State, as the case may be.

“(2) For the purposes of this section a route duly signed shall be deemed to be a route issued and signed in accordance with sect. 103 of the Army Act, 1881, or an order signed by a person authorized in this behalf by one of Her Majesty’s principal Secretaries of State, or a route or order signed by a person authorized in this behalf by the Admiralty, or, as regards the police, a route or order signed by a person authorized in this behalf by the police authority.

“(3) Fares payable under this section shall be exempt from passenger duty.

“(4) Where a company has by refusal or neglect to comply with an order of the Board of Trade (now Ministry of Transport) or the Railway Commissioners lost the benefit of this Act, that company shall, until its compliance is certified as in this Act provided, be exempt from the provisions of this section, but shall be bound to convey all such persons and things as mentioned in this section on the same terms as if this Act had not been passed.” Cheap Trains Act, 1883, s. 6.

This Act does not apply to Ireland. Sect. 11.

This section is left in force under the proviso to sect. 34 (1)

**Ch. XXVI.** of the Railways Act, 1921, which repeals generally all statutory provisions with respect to charges in connection with the carriage of passengers.

**Art. 34.**

By sect. 34 (2) of that Act, "in the case of the rates fixed under paragraph (v) of subsection (1) of section six of the Cheap Trains Act, 1883, or in any case where it is proved to the satisfaction of the rates tribunal that any charge in operation on the fourth day of August, 1914, and fixed under any subsisting agreement or special statutory provision, was originally so fixed for valuable consideration, the rates tribunal shall, and in any other case may, by order continue the charge, subject to such adjustment, if any, as to the tribunal may appear fair and equitable, and in making such adjustment, if any, the tribunal shall, as far as practicable, provide that the relative position between persons entitled to the charge and other persons as existing on the said fourth day of August shall not be prejudiced or improved."

An officer of the police, who holds the additional appointment of inspector under the Weights and Measures Act, 1889, when travelling by railway in performance of his duties as such inspector, is not entitled to travel at a reduced fare under the above section. *Spencer v. L. & Y. Ry. Co.*, [1898] 1 Q. B. 643; 67 L. J. Q. B. 465.

This section was extended to the air force by Order in Council. See S. R. & O. 548/1918.

**265.**—“(1) If at any time the Board of Trade (now Ministry of Transport) have reason to believe—

“(a) That upon any railway or part of a railway, or upon any line or system of railways, whether belonging to one company or to two or more companies, which forms a continuous means of communication, a due and sufficient proportion of the accommodation provided by such company or

companies is not provided for passengers at fares Ch. XXVI.  
Art. 225. not exceeding the fares normally charged for passengers conveyed in third-class carriages; or

“(b) That upon any railway carrying passengers proper and sufficient workmen’s trains are not provided for workmen going to and returning from their work at such fares and at such times between six o’clock in the evening and eight o’clock in the morning, as appear to the Board of Trade (now Ministry of Transport) to be reasonable,

then and in either case the Board of Trade (now Ministry of Transport) may make such inquiry as they think necessary, or may, if required by the company or any of the companies concerned, refer the matter for the decision of the Railway Commissioners, who shall have the same power therein as if it had been referred to their decision in pursuance of the Regulation of Railways Act, 1873.

“(2) If on an inquiry under this Act it is proved to the satisfaction of the Board of Trade (now Ministry of Transport) or the Railway Commissioners, as the case may be, that such proper and sufficient accommodation, or workmen’s trains, as aforesaid, are not provided by any railway company, the Board of Trade (now Ministry of Transport) or the Railway Commissioners, as the case may be, may order the company to provide such accommodation or workmen’s trains at such fares as, having regard to the circumstances, may appear to the said Board or the Commissioners to be reasonable.

“(3) If any company on whom an order is made under this Act to provide proper and sufficient accom-



**CH. XXVI.  
Art. 335.**

modation or workmen's trains refuse, or, at any time after the expiration of one month from the making thereof, neglect to comply with the order, the Board of Trade (now Ministry of Transport) shall issue a certificate to that effect to the Commissioners of Inland Revenue, and after the date of such certificate the company shall lose the benefit of this Act and be liable to pay in respect of the fares received after such date the same amount of passenger duty as would be payable if the passenger duty had not been varied as provided by this Act, and shall continue so liable in respect of all fares received up to the date at which the Board of Trade (now Ministry of Transport) certify that the company has complied with the said order. Where two or more companies are concerned, the certificate shall state whether both or all, or one or more, and which of them is in default.

“(4) A company on whom an order is made by the Board of Trade (now Ministry of Transport) under this section may, within six months after the making of the order, appeal to the Railway Commissioners, who shall have the same power in the matter as if it had been originally referred to their decision.

“(5) The Board of Trade (now Ministry of Transport) or the Railway Commissioners, as the case may be, may rescind or vary any order made by them under this section.” (Cheap Trains Act, 1883, s. 3, as amended by the Finance Act, 1921, s. 6 (1) (b).

It would appear that the above section has not been repealed by sect. 34 of the Railways Act, 1921, as from the appointed day, *i.e.*, the day to be fixed by the Rates Tribunal under sect. 31 of the Act for the new standard charges to come into operation.

By sect. 34 of the above Act all statutory provisions with respect to charges for the carriage of passengers are repealed as from the appointed day; sect. 6 of the Cheap Trains Act, 1883, is specifically excepted, but no reference is made to sect. 3 of that Act. The point came before the Rates Tribunal when settling the Form of Schedules of Standard Charges, when that Court leaned to the view that sect. 3 of the Act of 1883 was not repealed by sect. 34 of the Act of 1921. See 17 Ry. & Can. Ca. p. 163.

Ch. XXVI.  
Art. 265.

The Cheap Trains Act, 1883, does not apply to Ireland. Sect. 11.

Under sects. 2, 4 and 5 of that Act, as amended by the Finance Act, 1921, all fares not exceeding "minimum fares" are exempt from passenger duty, and the limitations, which under the previous Acts were attached to the exemption of cheap trains, are consequently repealed.

Under sect. 2, fares for conveyance between railway stations within areas containing not less than 100,000 inhabitants, and certified to be urban districts in manner provided by that section, are rendered liable to a duty of 2 per cent. in lieu of the then existing duty of 5 per cent. The Board of Trade have certified certain districts.

"Minimum fare" means "the lowest fare normally charged to an adult or a child, as the case may be, for a single, a return, or a periodical ticket, as the case may be, for any journey." Finance Act, 1921, s. 6 (1) (c).

"Nothing in this section shall operate to charge with passenger duty any fares which were not at the commencement of this Act chargeable with such duty, and where, before 1st January, 1917, a fare for any journey was exempt from railway passenger duty, notwithstanding that it entitled a person to be conveyed in a class of carriage superior to that in which a person paying the lowest ordinary fare then chargeable for that journey was entitled to be conveyed, a fare entitling a person to be conveyed for the same journey and in the same class of carriage shall be exempt from duty if the proportion which that fare bears to the minimum

**Ch. XXVI.** fare does not exceed the proportion which the first-mentioned fare  
**Art. 285.** bore to the lowest ordinary fare chargeable before the said first day in January." *Ibid.*, s. 6 (3).

"Lowest ordinary fare" means, for this purpose, the lowest fare chargeable otherwise than to a special class of passengers, or on a special occasion. *Ibid.*

The powers of the Board of Trade were transferred to the Ministry of Transport by the Ministry of Transport Act, 1919, s. 2, as from 23rd Sept. 1919. *Vide* S. R. & O. 1440/1919, dated 22nd Sept. 1919.

In *A.-G. v. Furness Ry. Co.*, [1899] 2 Q. B. 267, the railway company, whose third class fares did not exceed a penny a mile, abolished all its second class carriages and fares, and in lieu of them introduced a system by which its third class passengers, after taking and paying for their tickets, could for an extra charge procure "supplementary reserve tickets," entitling them to travel in reserved third class compartments not available for the ordinary third class passengers who had not paid the extra charge. It was held that the extra sums were paid in respect of extra accommodation, incidental to the conveyance of the passengers, and that the Crown was entitled to duty upon the sums received by the railway company in all cases where the sum paid for the supplementary ticket, when added to that paid for the ordinary third class ticket, exceeded 1*d.* a mile.

The reductions of taxation referred to in this Article were made by Parliament in the belief and trust, justified in most cases by the growth of third class traffic, and by the increase of workmen's trains, that the true policy of the companies in the matter of accommodation to the poorer classes of society is consistent with the interests of those classes, and that the future would see a continual increase in the accommodation given to those classes. See Board of Trade Circular, 12th October, 1883.

Since the year 1864, a clause has been inserted in the special Acts of most of the railway companies having a terminus in London, compelling such companies to run cheap trains for *bonâ*

*vide* artisans, mechanics, and labourers who have daily business in London. The Acts protect the railway company in case of accidents happening to such passengers, by their liability being limited to 100*l*. The amount of compensation to be received by such passengers, if injured, is to be determined by an arbitrator appointed by the Board of Trade (now the Ministry of Transport), and not otherwise. Ch. XXVI.  
Art. 284.

A train is not the less a "workmen's train" within the meaning of the above Act, because the railway company run first and second class carriages on the same train with third class carriages. *In re Metropolitan Ry. Co.*, 8 Ry. & Can. Ca. 32.

Upon a complaint by the L.C.C. that the G. E. Ry. Co. did not issue workmen's tickets on certain lines at a sufficiently low fare, the Court held that the urban councils of the districts in which the stations concerned were situate might intervene. Cf. Railway and Canal Traffic Act, 1888, s. 7. *L.C.C. v. G. E. Ry. Co.*, 14 Ry. & Can. Ca. 224.

There is nothing in the Cheap Trains Act, 1883, which warrants the conclusion that a bargain was thereby made between the State and the railway companies by which workmen's trains should be run even if they occasioned a loss in consideration of the remission of passenger duty. *Ibid*.

Held, further, that the proceedings were a hearing within the Railway and Canal Traffic Act, 1894, s. 2, and that the Court had no discretion as to costs under the Railway and Canal Traffic Act, 1888, s. 19. The application of the County Council not being frivolous or vexatious, no order for the payment of the costs of the urban district councils would be made. *Ibid*.

Inasmuch as under the above Act railway companies obtain a partial remission of passenger duty on condition of running workmen's trains, the Railway Commissioners will not consider the question as to whether the railway company will make a profit by running such trains. See *In re London Reform Union, &c. and G. E. Ry. Co.*, 10 Ry. & Can. Ca. 280.

In the case of *In re London Reform Union, &c. and G. N. and*

**CA. XXVI.** *N. L. Ry. Cos.*, 10 Ry. & Can. Ca. 293, at p. 297, Wright, J.,  
Art. 285. said: "We do not for a moment say that it would be a sufficient answer for the railway company to say that they would make no profit, or even that they might make some loss . . . but all those things have to be borne in mind."

It would appear from the same case that where a through service is maintained by agreement over two companies' lines, the Railway Commissioners have jurisdiction to order a through service of workmen's trains.

The Railway Commissioners will not order workmen's trains to be run under the above Act (1) unless there in fact exists a class of workmen residing on the railway and requiring such a service (*In re London Reform Union, &c. and G. N. and N. L. Ry. Cos.*, 10 Ry. & Can. Ca. 293); or (2) unless the demand for accommodation is sufficiently large to bear some relation to the difficulty of giving it. *In re Fawcett Association and L. B. & S. C. Ry. Co.*, 10 Ry. & Can. Ca. 299.

It would appear from the last case that postmen and letter-sorters are "workmen" within the above Act.

It is no part of the Commissioners' duty to further a policy of spreading the working class population over a given district. They can only deal with an existing demand. *L.C.C. v. G. E. Ry. Co.*, 14 Ry. & Can. Ca. 224; 27 T. L. R. 317.

**266.** Any railway company that shall knowingly let for hire or otherwise provide any special train for the purpose of conveying parties to or to be present at any prize fight, or who shall stop any ordinary train to convenience or accommodate any parties attending a prize fight at any place not an ordinary station on their line, are liable to a penalty, to be recovered in a summary way before two justices of the county in which such prize fight is held or attempted to be held, of such sum not exceeding

500*l.*, and not less than 200*l.*, as such justices determine. Regulation of Railways Act, 1868, s. 21. Ch. XXVI.  
Art. 900.

One-half of the penalty is to be paid to the party at whose suit the summons is issued, and the other half to be paid to the treasurer of the county in which the prize fight is held or attempted to be held, in aid of the county rate. *Ibid.* Service of the summons on the secretary of the company at his office ten days before the hearing is sufficient to give the justices jurisdiction to hear and determine the case.

**267.** Every railway company must provide, and maintain in good working order, in every train worked by it which carries passengers, and travels more than twenty miles without stopping, such efficient means of communication between the passengers and the servants of the company in charge of the train as the Board of Trade (now Ministry of Transport) may approve.

If a railway company makes default in complying with this requirement it is liable to a penalty not exceeding 10*l.* for each case of default.

Any passenger who makes use of the said means of communication without reasonable and sufficient cause is liable for each offence to a penalty not exceeding 5*l.* Regulation of Railways Act, 1868, s. 22.

The powers of the Board of Trade were transferred to the Ministry of Transport by the Ministry of Transport Act, 1919, s. 2, as from Sept. 23rd, 1919. *Vide* S. R. & O. 1440/1919, dated 22nd Sept., 1919.

A train is or is not within this section according to the actual instructions as to stopping given to the company's servants in charge of the train. And, therefore, where the primary cause of

**CH. XXVI.** an accident to a train, not provided with such communication, was  
**Art. 287.** the breaking of a wheel-tire (without any negligence on the part of the company or their servants), and several minutes elapsed between the first shock felt by the passengers and the actual disaster resulting in the mischief complained of, it was properly left to the jury to say—First, what was the effect of the company's time-tables taken together with the special instructions given to their servants with regard to the train in question; and, second, whether the absence of the statutory precaution was conducive to the accident which occurred. *Blamires v. Lanc. & York. Ry. Co.*, L. R. 8 Ex. 283; 42 L. J. Ex. 182. In that case Blackburn, J., said, at p. 184 of the Law Journal Report: "I wish to leave altogether open what may be the duty of railway companies with regard to trains running for shorter distances than twenty miles."

A passenger improperly pulling the communication cord commits an offence within this section, even though the train in question does not travel 20 miles without stopping. *Jones v. Bithell*, [1919] 1 K. B. 219; 88 L. J. K. B. 390.

**268.** All railway companies, except the Metropolitan Railway Company, are bound, in every passenger train where there are more carriages than one of each class, to provide smoking compartments for each class of passengers, unless exempted by the Board of Trade (now Ministry of Transport). Regulation of Railways Act, 1868, s. 20.

The powers of the Board of Trade were transferred to the Ministry of Transport as from Sept. 23rd, 1919. See note to last Article.

Any railway company (including in such term any person or persons who is or are proprietor or proprietors of a railway or of carriages used for the conveyance of passengers upon a railway)

may make application to the Commissioners of Inland Revenue Ch. XXVI  
Art. 208.  
for the grant of a licence or licences for the dealing in and sale  
of tobacco and snuff by any means, personal, mechanical, or other-  
wise, in any railway carriage of which such company are the  
proprietors.

Such application shall be made upon a form to be provided by  
the Commissioners, and containing such particulars as they may  
prescribe.

The licence shall be granted by the Commissioners upon pay-  
ment in respect of each carriage of the excise duty of five shillings  
and threepence, and shall expire on the fifth day of July after the  
date thereof. All the enactments relating to the dealing in and  
sale of tobacco and snuff and excise licences shall be applicable  
to such carriages and licences, and every carriage in respect of  
which a licence is granted shall be deemed to be "premises" of  
a dealer in and seller of tobacco within the meaning of the enact-  
ments relating to the dealing in and sale of tobacco or snuff.

If any railway company shall deal in or sell tobacco or snuff,  
or suffer tobacco or snuff to be dealt in or sold in any railway  
carriage, without having in force a licence authorizing the com-  
pany so to do, such company shall incur a fine of fifty pounds;  
and if in any proceedings for the recovery of such fine any  
question shall arise as to the proprietorship of any railway  
carriage, the proof of proprietorship shall lie upon the defendant.  
See Revenue Act, 1884, s. 12.

This section was extended to omnibuses, tramcars, and stage  
carriages by the Finance Act, 1897, s. 6 (1).

See bye-law as to smoking, *post*, p. 525.



## II.—GENERALLY.

Ch. XXVI.  
Art. 269.

269. It is the duty of a carrier of passengers who holds himself out to the public generally without exception to carry passengers who offer themselves to be carried to receive all persons as passengers who offer themselves in a fit and proper state to be carried, provided the carrier has sufficient room in his conveyance, and the passengers are ready and willing to pay the proper and reasonable fare, and to conform to reasonable regulations as to carriage. *Clarke v. West Ham Corporation*, [1909] 2 K. B. 858; 79 L. J. K. B. 56.

Prior to the above quoted case it was doubted whether, independently of the obligation of railway companies under the Railway and Canal Traffic Act, 1854 (*ante*, Art. 263, p. 469), carriers of passengers were bound to receive and carry all persons who offered themselves to be carried, in the same manner as common carriers of goods. See *Bretherton v. Wood*, 3 Bro. & B. 54; *Benett v. P. & O. Steamboat Co.*, 18 L. J. C. P. 85.

The cases of *Aston v. Heaven*, 2 Esp. 533; *Christie v. Griggs*, 2 Camp. 79; *Sharpe v. Grey*, 9 Bing. 457, were formerly quoted as authorities for the proposition that a person who conveys passengers *only* is not a common carrier.

The matter, however, must now be regarded as settled by the Court of Appeal in *Clarke v. West Ham Corporation*, [1909] 2 K. B. 858. Farwell, L. J., thus summarised the position in that case at p. 876 *et seq.*: "It is contended that carriers of passengers only are not common carriers at all, and that none of the liabilities of common carriers attach to them. I am of opinion that this is not correct. A common carrier of goods comes under two distinct duties or liabilities: he is liable to carry according to his profession, and he is also liable as bailee of chattels under the fifth head in *Coggs v. Bernard* (*locatio operis faciendi*), it is as bailee

that his liability as insurer arises, binding him to answer for the goods delivered to him at all events. A carrier of passengers comes under the first duty or liability, and for the same reason, namely, that he is bound to carry according to his profession. But he is not liable under the other head because he is not a bailee: bailment is confined to chattels, and does not extend to human beings. The carrier of passengers is free from liability as an insurer, not because he is not a common carrier, but because, although a common carrier, he is not a bailee of his passengers."

Ch. XXVI.  
Art. 289.

Lindley, L. J., in *Dickson v. G. N. Ry. Co.*, 18 Q. B. D. 176, at p. 185, said: "Railway companies are bound to provide reasonable facilities for carrying passengers; but they are not common carriers of passengers."

See also *East Indian Ry. v. Kalidas Mukerjee*, [1901] A. C. 396; 70 L. J. P. C. 63; and Art. 288, p. 528, *post*.

It would seem that a common carrier for the carriage of passengers may, under certain circumstances, be indicted for refusing to carry one. *Per Patteson, J.*, in *Pozzi v. Shipton*, 1 P. & D. 4, at p. 12.

**270.** A railway company without express power to carry on business as omnibus proprietors for the purpose of carrying their passengers to and from their ultimate destination in a town served by such railway company may not do so, unless they can show that such business is incidental or consequential upon the use of their statutory powers. *Att.-Gen. v. Mersey Ry. Co.*, [1907] A. C. 415; 76 L. J. Ch. 568.

**271.** Apart from any facilities granted by the Railway Commissioners, a railway company has the right to exclude from their stations any persons, except such as are desirous of using the railway. Upon persons desirous of using the railway they may impose such

CH. XXVI.  
Art. 271.

terms as they think proper as the condition of admittance, subject to the right of any person who is prejudiced by their action to complain to the Railway Commissioners. *Perth General Station Committee v. Ross*, [1897] A. C. 479; 66 L. J. P. C. 81.

In the above case the House of Lords held that the respondent, Ross, a hotel-keeper in Perth, who claimed the right to send his "boots," wearing a distinctive uniform, upon the platform at Perth Station, had no right, by himself or his servants, to enter upon or use the said station, except with the leave of the appellants, and under such conditions as they might prescribe.

This case leaves it doubtful whether a railway company have the right to exclude any member of the public from their stations, or only persons who are not travellers or interested in goods traffic upon the railway.

"The public has a right to go, and has a right to enter into a contract with them; and the railway company may be compelled if they refuse, either by action at the suit of the complaining party, or by an application to the Railway Commissioners. But I should be sorry to throw any doubt on the absolute right of the railway company in the first instance to regulate their own traffic in their own way, and to refuse access to their station under the circumstances stated in this case." *Per Halsbury*, L. C. *Ibid.* at p. 483 of the L. R.

The same point incidentally arose in *Barker v. Midland Ry. Co.*, 18 C. B. 46; 25 L. J. C. P. 184, *ante*, p. 413. In all the judgments in that case a distinction was made between travellers and persons interested in goods traffic on the one hand, and the public generally on the other, but the point was not decided.

**272.** A passenger is entitled to accommodation according to his contract. In the absence of express stipulation, a passenger is entitled to all reasonable and usual accommodation.

It is the duty of a railway company not to allow a passenger carriage to be overcrowded, and they are liable to pay damages in respect of injury which is the natural result of such overcrowding. *Met. Ry. Co. v. Jackson*, 3 App. Cas. 193; 47 L. J. Q. B. 303; see *post*, p. 488.

CH. XXVI.  
Art. 978.

The Railway and Canal Traffic Act, 1854, s. 2, compels a railway company to grant all due and reasonable facilities for passenger traffic. *Ante*, p. 312.

Upon an unconditional contract to carry, it seems that a railway company are bound to find room for all: *Hawcroft v. Gt. N. Ry.*, 21 L. J. Q. B. 178; but at intermediate stations they are allowed to issue tickets conditionally on there being room. See bye-law on the subject, *post*, p. 519.

If there is no room in the first train, the railway company are bound to send on the passenger by the next one.

In *Hawcroft v. Gt. N. Ry. Co.*, *supra*, the plaintiff, intending to go to London and back by the defendants' railway, paid for and received from them the following ticket at Barnsley and went to London with it:—"B. to L. and back. Excursion ticket. To return by the trains advertised for that purpose on any day not beyond 14 days after date hereof." Morning and evening return excursion trains were advertised on the Saturdays, but they were not advertised to go to B. On a Saturday morning within the fourteen days, the plaintiff presented himself at the L. station in time for the morning return train. It became full, so that the plaintiff could not find room in it, and it would have been dangerous to have added other carriages to it. The company refused to let him go by an ordinary train, but kept him waiting until the evening return train, in which he found a place. That train took him only to D., where he arrived on Sunday morning. No trains ran from D. to B. on Sundays. The line from D. to B. belonged, not to the defendants, but to another company. The

**Ch. XXVI.** plaintiff hired a carriage to take him from D. to B., and brought  
**Art. 373.** an action to recover the expense from the defendants. It was held that by the terms of the excursion ticket and advertisements, the defendants contracted to carry the plaintiff back to B. on any day within the fourteen days that he might choose, and by any of the advertised trains that he might select; that not sending him by the morning train was a breach of contract, and that taking him only to D., instead of to B., without previous notice, was a second breach. Patteson, J., said, at p. 182: "If it had been brought to the knowledge of the plaintiff, that if of his own pleasure he chose to stay for the evening train on the Saturday, he would have to wait at Doncaster the whole of Sunday, I cannot say that he would have had any right to damages. But it was not the plaintiff who chose to wait for the evening train; the company refused to take him by the morning train. In that, indeed, they were right, because the train was too full to allow him to be carried with safety. But if they put him off, and kept him until the evening, they should have made some special provision for carrying him on to Barnsley at once. I do not think that they had any right to keep him in London until the 9h. 45m. evening train. They should have sent another train. The case finds that they might have done so without danger."

The railway companies have a bye-law which enacts that "when a carriage, or compartment of a carriage, contains the full number of passengers which it is constructed to carry, no additional person shall enter or remain therein if requested by any passenger therein, or by a guard of the train, or any duly authorized servant or agent of the company not to do so." See these bye-laws, *post*, p. 522.

In the case of *Met. Ry. Co. v. Jackson*, 3 App. Cas. 193; 47 L. J. Q. B. 303, the plaintiff was a passenger in a railway carriage, when three persons got in beyond the number it was constructed to carry, and remained standing in it until the train arrived at the next station, where, the platform being crowded, a rush was made for places, and, notwithstanding that

there were these three extra persons in the carriage, the door was opened, and others tried to get in. The plaintiff rose from his seat, and raised his hand to prevent them, when the train moved on, and the plaintiff fell forward with his hand on the hinge of the door. At that moment a porter pushed away the people who were trying to get in, and slammed the door, crushing the plaintiff's thumb. There was no evidence that a complaint of the overcrowding had been made to the railway officials, or that they knew of the fact. It was held by the House of Lords that there had been negligence in allowing more than the proper number of passengers to enter the carriage (see judgment of Lord Cairns at p. 198 of the *L. R.*), but that there was no evidence to connect the injury sustained by the respondent with such negligence.

Ch. XXVI.  
Art. 572.

In Scotland the Court of Session has held that a railway company is entitled to assign to passengers the seats which they are to occupy in the class of carriage for which they have taken tickets, and that the company may exercise this right notwithstanding the fact that a passenger has already selected a seat. *Scott v. G. N. of S. Ry. Co.*, 22 Sess. Ca. 287.

In the above case the passenger had taken a special kind of ticket known as a "composition" ticket, subject to certain conditions of which he had notice; but the judgments of the Court apply the principle to all classes of tickets.

**273.** The contract with a railway company for the carriage of a passenger is made by payment of money by the passenger in exchange for a ticket which operates as a receipt for the money, and specifies to some extent the particulars of the contract undertaken. The contract may include any terms or conditions, *Duckworth v. L. & Y. Ry. Co.*, 84 L. T. 774, either expressed on the ticket itself or incorporated into the contract by a reference on the ticket to some other document containing such terms and conditions.

CH. XXVI.  
Art. 878.

See *Watkins v. Rymill*, 10 Q. B. D. 178; 52 L. J. Q. B. 121. Such terms and conditions are not binding on the passenger unless he assents thereto, but his assent may be either express or implied.

If the passenger did not know that the ticket contained conditions or a reference to conditions, and the fact that the ticket contained conditions or such a reference was not sufficiently brought to his notice, he is not bound by them. *Henderson v. Stevenson*, 2 H. L. Sc. 470. If he knew that there were conditions or a reference thereto on the ticket, he is bound thereby: *Harris v. G. W. Ry. Co.*, 1 Q. B. D. 515; 45 L. J. Q. B. 729; 34 L. T. 647; and although he did not know or believe that the ticket contained conditions or a reference thereto, he is bound thereby, provided that the railway company gave him reasonable notice that the ticket contained such conditions or reference. It is a question of fact whether such notice was given. *Parker v. S. E. Ry. Co.*, 2 C. P. D. 416; 46 L. J. C. P. 768; *Burke v. S. E. Ry. Co.*, 5 C. P. D. 1; *Woodgate v. G. W. Ry. Co.*, 51 L. T. 826; *Richardson v. Rowntree*, [1894] A. C. 217; 63 L. J. Q. B. 283; *Hooper v. Furness Ry. Co.*, 23 T. L. R. 451. Provided that in the case of an infant passenger a condition detrimental to his interest will not be enforced. *Flower v. L. & N. W. Ry. Co.*, [1894] 2 Q. B. 65; 63 L. J. Q. B. 547.

A paper book of coupons is a ticket for this purpose. *Burke v. S. E. Ry. Co.*, *supra*.

Where the passenger is an infant, the ordinary rule that the contract must not be to his detriment will apply.

Therefore, where an infant passenger agreed that in considera-

Ch. XXV  
Art. 273

tion of his being carried on special terms, neither he nor his legal representatives or relatives should have any claim on the railway company for any injury that might happen to him or his property while upon their railway, even though the same was due to their negligence, and further that he and his representatives would indemnify the company against all loss and expense which they might incur by reason of such injury or by reason of any proceedings that might be taken against them in respect thereof, the Court of Appeal held that such conditions were invalid, and were not binding upon the infant. *Flower v. L. & N. W. Ry. Co.*, [1894] 2 Q. B. 65; 63 L. J. Q. B. 547.

Where a contract had printed on it in large type, "Read this special contract," it was held that the passenger was bound by it although he did not read it. *Grand Trunk Ry. Co. of Canada v. Robinson*, [1915] A. C. 740; 84 L. J. P. C. 194. Cf. also *Canadian Pacific Ry. Co. v. Parent*, [1917] A. C. 195; 86 L. J. P. C. 123; *Hood v. Anchor Line, Ltd.*, [1918] A. C. 837; 87 L. J. P. C. 156.

In *Grand Trunk Ry. Co. v. Robinson*, *supra*, Lord Haldane, L. C., said at p. 747 of the L. R.: "If a passenger has entered a train on a mere invitation or permission from a railway company without more, and he receives injury in an accident caused by the negligence of its servants, the company is liable for damages for breach of a general duty to exercise care. . . . But this general duty may, subject to such statutory restrictions as exist . . ., be superseded by a special contract, which may either enlarge, diminish, or exclude it. . . . If the contract is one which deprives the passenger of the benefit of a duty of care, which he is *prima facie* entitled to expect that the company has accepted, the latter must discharge the burden of proving that the passenger assented to the special terms imposed." The Lord Chancellor then proceeds to point out that if a person does not take the trouble to read the terms of a contract as expressed on the ticket offered, and yet knew there was something written or printed on it which might contain conditions, that person will nevertheless be deemed to have assented to such special terms.



CH. XXVI.  
Art. 274.

274. The contract into which a railway company enter with a passenger on giving him a ticket between two places is the same, whether the journey be entirely over their own line, or partly over their own line and partly over the line of another company, and whether the passage over the other line be under an agreement to share profits, or simply under running powers. *G. W. Ry. Co. v. Blake*, 7 H. & N. 987; 31 L. J. Ex. 346; *Thomas v. Rhymney Ry. Co.*, L. R. 6 Q. B. 266; 39 L. J. Q. B. 141.

275. The taking of a ticket merely entitles a passenger to be carried to the destination therein named within a reasonable time. *Hurst v. G. W. Ry. Co.*, 34 L. J. C. P. 264; 19 C. B. (N. S.) 310.

The publication of time-tables amounts to a promise by the railway company that the trains therein advertised, whether belonging to themselves or another company, will, in fact, run subject to the terms and conditions therein stated for the conveyance of any person who regularly applies for a ticket and tenders the proper fare. *Denton v. G. N. Ry. Co.*, 5 E. & B. 860; 25 L. J. Q. B. 129.

Such a promise is not an absolute contract to carry: it is only a contract to use all reasonable diligence to carry. The company will not be liable for the failure to perform such promise if they can show that there was no want of reasonable diligence on their part to ensure punctuality. *Fitzgerald v. Mid. Ry. Co.*, 34 L. T. 771; *Cooke v. Mid. Ry. Co.*, 57 J. P. 388; *Lockyer v. International Sleeping Car Co.*, 61 L. J. Q. B. 501.

It was decided in *Hurst v. G. W. Ry. Co.*, *ante*, that the mere

granting of a ticket does not impose on a railway company the obligation to have a train ready to start at a definite time. In that case the plaintiff was non-suited, because he did not put in evidence the time-tables of the company. The facts were these:—

The plaintiff had taken a ticket from the defendants from C. to N. In order to proceed from C. to N. it was necessary to change at G. The plaintiff, after waiting a long time, was told by a porter that the train was late in consequence of an accident, and the train eventually arrived an hour and a-half late. The consequence was that the plaintiff was too late for the train at G., which would have carried him on to N. The time-table was not put in, but only some correspondence, in which the defendants repudiated their liability on the ground that by the time-tables they gave notice that they would not be liable for the trains not keeping time. It was held that there was no evidence of a cause of action.

Erle, C. J., said, at p. 265 of the L. J. Report: "No special contract arises from mere talk with officials—casual talk with an official whose duty may merely be to open or shut the doors of the carriages, and, indeed, all that the porter says is that the train is late."

In *Denton's Case*, *ante*, in the printed and published time-tables of the defendants for the month of March, 1855, which were kept in circulation throughout the month, a passenger train was advertised to leave the defendants' station in London at 5 p.m., and to arrive at Peterborough at about 7.20 the same evening, and about the same time to proceed on to Hull, arriving at Hull about midnight. The time-tables contained the following notice:—"The companies make every exertion that the trains shall be punctual, but their arrival or departure at the time stated will not be guaranteed, nor will the companies hold themselves responsible for delay or any consequences arising therefrom." The defendants' line of railway extended as far as A. beyond Peterborough, but they had running powers over the L. and Y. Railway to M., where the N. E. Railway Company's line joined; and under the Railway

**CH. XXVI.** Clearing Act, 1850, the defendants had for some time been issuing tickets with which passengers were conveyed, as advertised, from Peterborough to Hull. But, on the 1st of March, the N. E. Railway Company discontinued to run their train, having given previous notice to the defendants, but not until after their time-tables had been printed and published, and in consequence the defendants were no longer able to issue tickets by the train as advertised. Relying on the time-tables, the plaintiff left London on the 25th of March for Peterborough, on business, intending to go on to Hull the same evening. He accordingly applied to the clerk at the Peterborough station in proper time for a ticket by the train advertised to leave for Hull about 7.20 p.m., and offered to pay the fare; the clerk, however, refused to grant the ticket, stating as a reason that the N. E. Railway Company had discontinued their train. The plaintiff then took a ticket and proceeded as far as the M. Junction, where he was obliged to remain that night, and, it was admitted, had in consequence sustained a pecuniary loss. It was held by Campbell, C. J., Wightman, J., and Crompton, J., first, that for the reasons stated in this article, the defendants were liable to the plaintiff for a breach of contract. Secondly, that by continuing the publication of the time-tables throughout the month of March, the defendants were also liable for the loss to the plaintiff, caused by a false representation knowingly made. And, per Crompton, J., that an action would lie against the defendants for a breach of duty in refusing to take the plaintiff to Hull as advertised.

Where a sleeping car company, which had sleeping cars in certain trains running between Paris and the south of France, stated in its official guide that such trains corresponded with other trains leaving London, such statement was held to be a mere representation that the proper times of arrival of the trains from London were as stated, but not a warranty of punctuality. It imposed no duty on the company to see that such trains did so arrive. *Lockyer v. International Sleeping Car Co.*, 61 L. J. Q. B. 501.

In *Cooke v. Midland Ry. Co.*, 57 J. P. 388, the plaintiff was

the holder of a ticket purchased by him from his employers, a colliery company, who had previously obtained it from the defendant company. Ch. XXVI.  
Art. 278.

The plaintiff had intended to travel by a certain train of the company timed to leave S. at 5.18 a.m. in order to proceed to his work. He arrived at S. station in proper time and waited for the train until 7 a.m. The train having not then arrived he went home, as it was too late for him to reach the colliery for his day's work. The train, in fact, arrived at 8 a.m.

In an action brought to recover the amount of his day's wages thus lost, the Court of Appeal, affirming the decisions of the County Court judge and the Divisional Court, held:--(1) That there was evidence to support the County Court judge in finding that there was a contract between the plaintiff and the company; (2) That the train having been unreasonably late, there had thus been a breach of the contract; (3) That the damages claimed for loss of the day's work were not too remote.

The following cases deal with the constructions of various conditions contained in the time-tables published by railway companies.

The words "every attention will be paid to ensure punctuality as far as practicable" in the time-tables of a railway company import a contract to use due attention to keep the times specified in the time-tables as far as practicable, having regard to the necessary exigencies of the traffic and circumstances over which the company have no control. *Le Blanche v. L. & N. W. Ry. Co.*, 1 C. P. D. 286; 45 L. J. C. P. D. 521.

In that case the plaintiff had taken a ticket at defendants' station in Liverpool for Scarborough, *via* Leeds. In consequence of delay on the journey the plaintiff arrived at Leeds after the ordinary train had left, and, though travelling for pleasure only, he took a special train thence to Scarborough. In an action to recover the cost of the special train, the Court of Appeal held, (1) that the facts and documents which formed the contract were

**CH. XXVI.** the taking and granting of the ticket, the ticket, the time-table, and the conditions. The conditions referred to were, amongst others, these:—"Time Bills. The published train bills of this company are only intended to fix the time at which passengers may be certain to obtain their tickets for any journey from the various stations, it being understood that the trains shall not start before the appointed time. Every attention will be paid to ensure punctuality as far as it is practicable; but the directors give notice that the company do not undertake that the trains shall start and arrive at the time specified in the bills; nor will they be accountable for any loss, inconvenience, or injury which may arise from delays or detention. The right to stop the trains at any station on the line, though not marked as a stopping station, is reserved. The granting of tickets to passengers to places off the company's line is an arrangement made for the convenience of the public; but the company do not hold themselves responsible for any delay, detention, or other loss or injury whatsoever arising off their lines, or from the acts or defaults of other parties, nor for the correctness of the times over the lines of other companies, nor for the arrival of this company's own trains in time for the nominally corresponding train of any other company." The Court further held, (2) that the defendants thereby contracted to make every reasonable effort to ensure punctuality; (3) that although a delay of a few minutes would not be evidence of a want of reasonable effort, yet a long or unusual delay was evidence calling upon the company to show that it arose in spite of such reasonable effort; and that there was evidence that such delay was due to lack of reasonable effort and the cause of the plaintiff's missing the corresponding train at Leeds; (4) that the cost of the special train was not recoverable as damages; chartering a special train in the circumstances of the case not being such an act as a person, according to the ordinary habits of society, delayed on his journey, under circumstances for which the company were not liable, would have done.

When time-tables and conditions contain provisions that a railway company will not be responsible for a train not running

punctually, a passenger taking a ticket which incorporates such time-tables and conditions has no remedy for loss or inconvenience through delay or missing connections at junctions. *McCartan v. N. E. Ry. Co.*, 54 L. J. Q. B. 441; *Woodgate v. G. W. Ry. Co.*, 51 L. T. 826. See p. 499, *post*.

Ch. XLVI.  
Art 278.

Although a railway company may issue a through ticket for a journey partly on their own line and partly on lines of other companies, they may entirely protect themselves by conditions from liability for anything occurring on such other lines. *Burke v. S. E. Ry. Co.* (1879), 5 C. P. D. 1; 49 L. J. C. P. 107.

A railway company are not bound to forward by special train a passenger failing to catch a train on their own line by reason of a connecting train being delayed by no fault of the company. *Fitzgerald v. Midland Ry. Co.*, 34 L. T. 771. In that case the plaintiff took a ticket from B. to L., by a train which was advertised to arrive at L. at 10.10 p.m. Between B. and D. the train was delayed by the floods, and consequently failed to catch the corresponding train from D. to L. On arriving at D. the plaintiff found that no other train would go to L. that night. The plaintiff claimed to recover damages from the railway company for breach of an absolute contract to carry from B. to L. on the day when the ticket was taken. The Court held that the railway company had only contracted to use due diligence to reach D. in time to catch the corresponding train to L., and that as they had failed to do so from unavoidable causes they were not bound to forward the plaintiff by special train.

A passenger took a tourist ticket from a railway company on the faith of their programme of tourist ticket arrangements. On the back was printed, "This ticket is subject to the regulations and conditions stated in the company's time-tables and bills." The monthly time bill stated that the company did not "hold itself responsible for any delay, detention, &c. arising off its lines, or from the acts or defaults of other parties, nor for the correctness of the times over other lines or companies." The passenger was detained by the lateness of another company's train. It was held

**Ch. XLVI.** that he was bound by the monthly time-table, and could not  
**Art. 275.** recover the expenses incurred through such detention. *Thompson v. Midland Ry. Co.*, 34 L. T. 34.

In the common stipulation on railway tickets, that the company shall not be liable for any delay in the starting or arrival of trains arising from accident or other cause, the words "other cause" mean "other cause in the nature of accident," and not "any cause whatever." *Buckmaster v. G. E. Ry. Co.*, 23 L. T. 471.

A railway company cannot absolve itself from the results of negligence in not starting a train by stating on the time-tables that the company will not "hold itself responsible for delay or any consequences arising therefrom." *Ibid.*

In that case the plaintiff recovered the cost of a special train and damages for loss of market. He was a miller, the holder of a season ticket between Framlingham in Suffolk, and London, and was in the habit of going to London twice a week to the Mark Lane Corn Market, by a train which was advertised to depart at 6.45 a.m., and to reach London at 10.40 a.m. The corn market opened at 11 o'clock. On the occasion in question, although the train and engine were at the platform, steam was not up, and the train could not proceed. He obtained a special train, but did not reach London until after 12 o'clock, and was too late for the market. The company relied upon the notice in the time-tables (as above set out), and upon the following statement upon the season ticket:—"This ticket is issued subject to the provisions of the company's bye-laws, rules, and regulations in force during its term. It is also issued on the condition that the company shall not be liable in respect of any alteration of trains, or any delay in the starting or arrival of trains arising from accident or other cause during its term." The Court held that "other cause" meant "other cause of accidental kind."

In consequence of the decision in *Le Blanche v. L. & N. W. Ry. Co.*, ante, p. 495, the Great Western Railway made a condition that they would not be liable for loss or inconvenience or delay unless due to wilful misconduct of their servants. In an

action brought in consequence of a connection being lost, it was held that when a through train arrives at a junction too late to enable a passenger to catch the train running in connection, it is not wilful misconduct of the company's servants to refuse to send the passenger on by a special train if, having regard to the condition of the line and the safety of other passengers, they consider it their duty to refuse. *Woodgate v. G. W. Ry. Co.*, 51 L. T. 826; 33 W. R. 428. Ch. XXVI.  
Art. 875.

It would appear from that case that if a company, knowing that their line was blocked, issued a ticket to a passenger for a through train, he might hold them liable for misrepresentation, and that personal inconvenience without pecuniary loss might be a ground for damages if the company's liability was established.

The fact that a railway company has paid the demand of another passenger for inconvenience from delay cannot be used against them as an admission of liability. *Ibid.* Unpunctuality will not entitle the passenger to rescind the contract and recover back his fare.

In *McCartan v. N. E. Ry. Co.*, 54 L. J. Q. B. 441, the company's time-tables contained conditions which were to the effect that the hours therein stated were those at which it was intended that trains should, as far as circumstances would admit, arrive and depart, but the arrival of any train in time for any nominally corresponding train on the company's own line or that of any other company was not guaranteed, and the company would not be responsible for any delay, however caused, or any consequences arising therefrom. The Court held that on the true construction of such conditions the railway company refused to guarantee the punctuality of their trains according to the times mentioned in the tables, from whatever cause the irregularity or want of punctuality might arise.

A railway company may relieve themselves from liability for loss of wages occasioned by the late arrival of one of their trains by means of a printed notice on the back of the ticket issued to the passenger. *Duckworth v. L. & Y. Ry. Co.*, 84 L. T. 774.



Ch. XXVI.  
Art. 276.

276. The contract made by the buying and selling of a ticket is a contract to carry the passenger by one continuous contractual operation, and does not, in the absence of special terms, entitle the passenger to alight at any intermediate station and to break his journey into two portions, and to require the company to carry him to the place to which his ticket is available by two separate trains, even though it be necessary for the passenger to change carriages at such station. *Ashton v. L. & Y. Ry. Co.*, [1904] 2 K. B. 313; 73 L. J. K. B. 701.

In that case the plaintiff was travelling with a through ticket from M. to C., and had to change at B., an intermediate station. There was another train from B. to C. in half an hour's time. The plaintiff, however, left the station, giving up her through ticket to C. when so doing. Later on in the day she travelled from B. to C., and was required to pay the fare between those stations. The Divisional Court held that she was not entitled to break her journey at B., and could not recover the second fare which she had paid in respect of her journey from B. to C. The same principle was followed with regard to a through journey on a tramway in *Bastable v. Metcalf*, [1906] 2 K. B. 288; 75 L. J. K. B. 670.

277. If a railway company fail to carry a passenger to the station for which he has duly taken a ticket, according to their contract, he may incur the reasonable expense of travelling there, and claim from the company as damages for their breach of contract the expense of getting there by other means, if there be any, or compensation for the trouble and inconvenience of walking there, if there be no other means of getting there. But he must not perform it in an

unreasonable, extravagant, or oppressive manner, and a test of what is reasonable in the circumstances is whether the passenger would have incurred the expense if he had himself to bear it. *Le Blanche v. L. & N. W. Ry. Co.*, 1 C. P. D. 286; 45 L. J. C. P. 521. He is not entitled to claim compensation for an injury or illness occasioned to him in the course of reaching his destination by such means, for such consequences are neither the proximate consequence of the breach of contract nor within the contemplation of the parties at the time of contracting. *Hamlin v. G. N. Ry. Co.*, 26 L. J. Ex. 20; 1 H. & N. 408; *Hobbs v. L. & S. W. Ry. Co.*, L. R. 10 Q. B. 111; 44 L. J. Q. B. 49.

Ch. XXVI.  
Art. 277.

Damages for delay of a passenger are recoverable on the principle that if the party bound to perform a contract do not perform it, the other party may supply the performance as reasonably near as he can, and charge as damages the reasonable expense incurred in so doing. See *Le Blanche v. L. & N. W. Ry. Co.*, *supra*.

In that case (as to the facts of which see p. 495, *ante*) Lord Justice Mellish said, at p. 313 of the L. R.: "I think that any expenditure which, according to the ordinary habits of society, a person who is delayed on his journey would naturally incur at his own cost, if he had no company to look to, he ought to be allowed to incur at the cost of the company, if he has been delayed through a breach of contract on the part of the company, but that it is unreasonable to allow a passenger to put the company to an expense to which he could not think of putting himself if he had no company to look to."

Whether a passenger is justified in taking a special train to remedy a delay caused by the unpunctuality of the railway company, depends upon the circumstances of each particular case. See note to Art. 275, at pp. 495—6.

Ch. XXVI.      Loss occasioned to a passenger prevented from attending business engagements by unreasonable delay in carrying him to his destination cannot be recovered against a railway company, as such damage is too remote. *Hamlin v. G. N. Ry. Co.*, ante, p. 501; *Hobbs v. L. & S. W. Ry. Co.*, ante, p. 501.

In *Hobbs's Case* the plaintiff, with his wife and two children of five and seven years old respectively, took tickets on the defendants' railway from Wimbledon to Hampton Court by the midnight train. They got into the train, but it did not go to Hampton Court, but went along the other branch to Esher, where the party were compelled to get out. It being so late at night, the plaintiff was unable to get a conveyance or accommodation at an inn, and the party walked to the plaintiff's house, a distance of between four and five miles, where they arrived at about three in the morning. It was a drizzling night, and the wife caught cold, and was laid up for some time, being unable to assist her husband in his business as before, and expenses were incurred for medical attendance. In an action to recover damages for the breach of contract, the jury gave 28*l.* damages, viz., 8*l.* for the inconvenience suffered by having to walk home, and 20*l.* for the wife's illness and its consequences. It was held, as to the 8*l.*, that the plaintiff was entitled to damages for the inconvenience suffered in consequence of being obliged to walk home; but as to the 20*l.* that the illness and its consequences were too remote from the breach of contract for it to be given as damages naturally resulting from it. Cookburn, C. J., said, at p. 118: "It must be in the contemplation of everybody that a passenger put down at a wrong place must get to the place of his destination somehow or other. If there are means of conveyance for getting there, he may take those means and make the company responsible for the expense; if there are no such means, I take it the carrier must compensate him for the personal inconvenience which the absence of those means has necessitated."

## CHAPTER XXVII.

### PASSENGER FARES AND BYE-LAWS.

#### I.—RAILWAY FARES.

**278.** A railway company may use and employ locomotive engines and carriages to be drawn thereby to carry and convey upon the railway all such passengers as shall be offered to them for that purpose, and make such reasonable charges in respect thereof as they may from time to time be authorized by the Railway Rates Tribunal. Railways Clauses Act, 1845, s. 86, as amended by the Railways Act, 1921, s. 31. (Chap.  
XXVII.  
Art. 278.)

See Art. 166, p. 233.

The law as stated above will take effect as from the day to be appointed by the Rates Tribunal. See next Article. Until then existing charges are maintained under sect. 60 of the Railways Act, 1921. See *ante*, p. 223.

Where two railways are worked by one company, then, in the calculation of tolls and charges for any distances in respect of passenger traffic conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway. Regulation of Railways Act, 1868, s. 18.

See *ante*, p. 254.

**279.** It is now provided by the Railways Act, 1921, s. 30 (1), that the railway companies shall submit to the Rates Tribunal a schedule of the standard charges

Chap.  
XXVII.  
Art. 27D.

(which, by sect. 57, includes fares) proposed to be made showing, *inter alia*, the fares for the conveyance of passengers and their luggage. *Ante*, p. 221.

"The schedule so submitted shall be divided into the parts and be in the form mentioned in the Fourth Schedule to this Act, or into such other parts or in such other similar form as the Rates Tribunal may prescribe." *Ibid.* s. 30 (2); *ante*, pp. 221-2.

"The Rates Tribunal shall consider the schedules of charges so submitted to them and any objections thereto which may be lodged within the prescribed time and in the prescribed manner, and, after hearing all parties interested and who are desirous of being heard, shall, in accordance with the provisions hereinafter contained, settle the schedules of charges and appoint a day (hereinafter called 'the appointed day') when the same shall come into operation." *Ibid.* s. 31; *ante*, p. 221.

From that date the fares appearing in the schedule as fixed by the Rates Tribunal are the charges which the company are entitled to make, and no variation either upwards or downwards shall be made from such authorized charges unless by way of an exceptional fare. *Ibid.* s. 32; *ante*, p. 230.

As to subsequent modification of standard charges, see sect. 35, *ante*, p. 236.

The expression "standard" is the correlative or complementary term to "exceptional," and there being therefore no other alternative, every chargeable rate, fare, or charge for conveyance must necessarily be included in one or other of the above categories. Railway companies are therefore required, under the Railways Act, 1921, s. 30, to submit to the Rates Tribunal forms of

schedules for standard season tickets and workmen's fares.  
See 17 Ry. & Can. Ca. 147.

chap.  
XXVII.  
Art. 89.

280. A company may charge "fares below the standard fares in such circumstances as the company may think fit, but the circumstances in which such exceptional fares, if below ordinary fares, may be charged, and the amount of reduction below the standard fare, shall be reported to the Minister within fourteen days, or such longer period as the Minister may allow, after the decision has been arrived at."

"If the Minister is of opinion that any company has granted exceptional fares in such a manner as prejudicially to affect any other class of users of the railway, or so as to jeopardise the realisation of the standard revenue of the company, he may refer the matter to the Rates Tribunal, who may, after giving the parties interested an opportunity of being heard, cancel or modify all or any of the exceptional fares so granted." Railways Act, 1921, s. 41.

The "Minister" means the 'Minister of Transport.'  
Sect. 2 (1) of the above Act.

281. "Every company shall cause to be exhibited in a conspicuous place in the booking office of each station on their line a list or lists, painted, printed, or written in legible characters, containing the fares of passengers by the trains included in the time-tables of the company from that station to every place for which passenger tickets are there issued." Regulation of Railways Act, 1868, s. 15.

Where an aggregate sum is charged by the railway company

Chap.  
XXVII.  
Art. 201.

for conveyance of a passenger by a steam vessel and on the railway, the ticket is to have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway. Regulation of Railways Act, 1868, s. 16.

A complaint by the D. Steam Packet Company that the N. W. Railway Company had not complied with sect. 16 of the Regulation of Railways Act, 1868, *ante*, was admitted by the N. W. Railway Company to be well founded, but as the D. Steam Packet Company did not show that such non-compliance had caused any damage to themselves, the Commissioners made no order. The railway company had established a steamboat service in competition with steamers which were provided and worked by the Steam Packet Company under statutory powers and agreements obtained by and made between them and the railway company, the effect of which was to give the latter a complete control over the fares of both routes. *City of Dublin Steam Packet Co. v. L. & N. W. Ry. Co.*, 4 Ry. & Can. Ca. 10.

282. "If any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding 40s." Railways Clauses Act, 1845, s. 103.

283. Sect. 5 of the Regulation of Railways Act, 1889, enacts:—

(1) "Every passenger by a railway shall, on request by an officer or servant of a railway company, either produce, and if so requested deliver up, a ticket showing that his fare is paid, or pay his fare from the place whence he started, or give the officer or servant his name and address; and, in case of default,

shall be liable on summary conviction to a fine not exceeding 40s.

(2) "If a passenger, having failed either to produce, or if requested to deliver up, a ticket showing that his fare is paid or to pay his fare, refuses, on request by an officer or servant of a railway company, to give his name and address, any officer of the company or any constable may detain him until he can be conveniently brought before some justice or otherwise discharged by due course of law.

(3) "If any person—

(a) travels or attempts to travel on a railway without having previously paid his fare, and with intent to avoid payment thereof; or

(b) having paid his fare for a certain distance, knowingly and wilfully proceeds by train beyond that distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or

(c) having failed to pay his fare, gives in reply to a request by an officer of a railway company a false name or address,

he shall be liable on summary conviction to a fine not exceeding 40s., or, in the case of a second or subsequent offence, either to a fine not exceeding 20l., or, in the discretion of the Court, to imprisonment for a term not exceeding one month.

(4) "The liability of an offender to punishment under this section shall not prejudice the recovery of any fare payable by him."



Chap.  
XXVII.  
Art. 203.

The above section extends the provisions of sect. 103 of the Railways Clauses Consolidation Act, 1845. The first part of the last-named section was repealed by the Statute Law Revision Act, 1892. It was as follows:—

“If any person travel or attempt to travel in any carriage of the company or of any other company, or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person having paid his fare for a certain distance, knowingly or wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof,” he should be liable to the prescribed penalty.

Sects. 146 and 147 of the Railways Clauses Consolidation Act, 1845, by which penalties might be levied by distress and offenders might be detained and imprisoned if no sufficient distress was available, were also repealed at the same time.

A long series of decisions had cut down the application of the repealed portion of sect. 103 of the Railways Clauses Act, 1845, to cases of fraud strictly so called. *Dearden v. Townsend*, L. R. 1 Q. B. 10. In that case, the passenger took a return ticket from E. to S. and back. He travelled to S.; but on the return journey, instead of getting out at E., he proceeded as far as N., without obtaining a fresh ticket. On getting out at N. he delivered up the ticket, explained the circumstances to the guard, and tendered the difference of the fare. It was held that he could not be convicted of the statutory offence, there having been no intent to defraud.

“Without having paid his fare” means the fare for the class by which the passenger travels. A passenger who, with a second or third class ticket, travels in a superior class with intent to defraud, is liable to be convicted under this section. *Gillingham v. Walker*, 44 L. T. 715; 29 W. R. 896.

A., who was travelling on the G. W. Railway in a train going to N., produced the “forward half” of a tourist return ticket

Chap.  
XXVII.  
Art.

from L. to N. and back. This ticket had been originally issued to another person, and was stated on the back thereof to be non-transferable. The original taker had used the ticket as far as H. on the way from L. to N., but then proceeded on a different route, and consequently, not having given up the forward half of the ticket, sold it to A., who was travelling with it between H. and N. The Court held that A. was liable to be convicted under sect. 103 of the Railways Clauses Act, 1845, for travelling without having previously paid his fare, with intent to avoid payment thereof. *Langdon v. Howells*, 4 Q. B. D. 337; 48 L. J. M. C. 133. Cf. also *Reynolds v. Beasley*, [1919] 1 K. B. 215; 88 L. J. K. B. 466.

In order to secure a conviction under sub-sects. 1 and 2 of sect. 5 of the Act of 1889, it is not necessary to prove an intention to defraud, but under sub-sect. 3 it is still necessary to prove such an intention.

If a passenger who has given a name and address to an officer of the company is detained while inquiries are being made to ascertain whether such name and address are correct, and it is ascertained that they are in fact correct, the railway company will be liable in damages to such passenger. *Knights v. L. C. & D. Ry. Co.*, 62 L. J. Q. B. 378.

In *Huffam v. North Staffordshire Ry. Co.*, [1894] 2 Q. B. 821, a passenger had used on a day after that upon which the ticket had been issued the return half of a ticket which was available on the day of issue only. By a bye-law of the company "any passenger using a ticket on any day for which such ticket was not available" was subject to a penalty of 40s. There was no intent to defraud. On a special case stated by justices, a Divisional Court held that the passenger could not be convicted, as there was no intent to defraud, and that the bye-law was invalid.

A railway company may prosecute a passenger for travelling without having previously paid his fare with intent to avoid payment, notwithstanding that the fare has previously been demanded. *Noble v. Killick*, 60 L. J. M. C. 61.

Chap.  
XXVII.  
Art. 203.

A railway ticket is a chattel within the Larceny Act, 1861, s. 88 (now replaced by the Larceny Act, 1916, s. 32), and a person obtaining it by false pretences may be convicted, although he intended to give it up at the end of the journey. *R. v. Chapman*, [1910] W. N. 131.

284. "From and after a date to be fixed by order of the Board of Trade, and subject to such exceptions, if any, as may be allowed by such order, every passenger ticket issued by any railway company in the United Kingdom shall bear upon its face, printed or written in legible characters, the fare chargeable for the journey for which such ticket is issued, and any railway company issuing any passenger ticket in contravention of the provisions of this section shall be liable to a penalty not exceeding 40s. for every ticket so issued, to be recovered on summary conviction." The Regulation of Railways Act, 1889, s. 6.

January 1st, 1891, was the date so fixed. *Vide* S. R. & O., Vol. II., p. 28.

285. Railway servants have implied authority to remove from a carriage passengers misconducting themselves or travelling without having paid the proper fare. *Lowe v. G. N. Ry. Co.*, 62 L. J. Q. B. 524.

This power is expressly given to properly authorized servants of a railway company by many of the bye-laws now in force. See p. 514 *et seq.*, *post*.

In the above case the defendant company was held to be liable to a passenger who had been ejected by a porter, with the approval

of the station-master, from a carriage in which he had a right to travel.

In Scotland it has been held that a passenger who collects tickets from his fellow passengers and then hands them over to the railway company's servant does not incur responsibility of any kind, and cannot be removed from a carriage in the event of one of the tickets which he has collected being defective.

*Harris v. N. B. Ry. Co.*, 18 Sess. Ca. (4th Ser.) 1009.

## II.—RAILWAY BYE-LAWS.

286. By sect. 108 of the Railways Clauses Act, 1845, railway companies are empowered from time to time, subject to the provisions of that and the special Act of the company, to make regulations for the following purposes:—

“For regulating the mode by which, and the speed at which, carriages using the railway are to be moved or propelled;

For regulating the times of the arrival and departure of any such carriages;

For regulating the loading or unloading of such carriages, and the weights which they are respectively to carry;

For regulating the receipt and delivery of goods and other things which are to be conveyed upon such carriages;

For preventing the smoking of tobacco, and the commission of any other nuisance in or upon such carriages, or in any of the stations or premises occupied by the company;

and, generally, for regulating the travelling upon,

Chap.  
XXVII.  
Art. 200.

or using and working of, the railway. But no such regulation shall authorize the closing of the railway, or prevent the passage of engines or carriages on the railway at reasonable times, except at any time when, in consequence of any of the works being out of repair, or from any other sufficient cause, it shall be necessary to close the railway, or any part thereof."

And for the better enforcing the observance of such regulations, the companies are empowered, subject to the provisions of 3 & 4 Vict. c. 97, to make bye-laws, and from time to time to repeal or alter such bye-laws, and make others, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this Act or the special Act; and such bye-laws must be reduced into writing, and have affixed thereto the common seal of the company; and any person offending against any such bye-law is liable to a penalty not exceeding 5*l.* for every offence; and if the infraction or non-observance of any such bye-law, or other such regulation, be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, the company may summarily interfere to obviate or remove such danger, annoyance or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law. Sect. 109 of the same Act.

"The power conferred on a railway company by the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Consolidation Act (Scotland), 1845, to make bye-laws subject to disallowance by the

Board of Trade, shall include power to make bye-laws for maintaining order in, and regulating the use of, railway stations and the approaches thereto." The Regulation of Railways Act, 1889, s. 7.

Chap.  
XXVII.  
Art. 206.

No bye-laws made under sect. 109 of the Railways Clauses Act, 1845, are valid unless confirmed and allowed by the *Board of Trade*. Railway Regulation Act, 1840, s. 8. The *Board of Trade* may also disallow any such bye-law. Sect. 9 of the same Act.

The powers of the Board of Trade have now been transferred to the Ministry of Transport. 9 & 10 Geo. V. c. 50, s. 2, and S. R. & O. 1440/1919, dated 22nd September, 1919.

The approval of the Board of Trade did not prevent an inquiry as to the validity of bye-laws. *R. v. Wood*, 5 E. & B. 49.

The bye-laws of a railway company made pursuant to these sections are documents of a public nature, and proveable by examined copy. Upon an information charging a passenger with an infraction of a bye-law, it was proved that a copy of the bye-laws was affixed in the manner directed by the Act at the two stations respectively at which the passenger entered and quitted the carriage, and it was held sufficient proof of publication; and that it was not necessary to prove further that copies were affixed at every other station on the line. *Motteram v. Eastern Counties Ry. Co.*, 29 L. J. M. C. 57.

Where a bye-law of a railway company imposes certain duties on passengers and lays correlative duties on the company, the company must have strictly complied with the bye-law on their part to entitle them to enforce it against the passenger. *Jennings v. Gt. N. Ry. Co.*, L. R. 1 Q. B. 7; 35 L. J. Q. B. 15.

With regard to the class of persons to whom such bye-laws apply, in *Perth General Station Committee v. Ross*, [1897] A. C. 479; 66 L. J. P. C. 81, Lord Watson said, at p. 487:—"It

Chap.  
XXVII.  
Art. 286.

appears to me that such regulations are only intended to govern the conduct of those persons whom the owner of the station cannot exclude or whom he may choose to admit. When their right is permissive merely, and the permission is conditional, I can see no reason why, in order to enforce the condition, a regulation sanctioned by the Board of Trade should be required. I do not think it was intended by the legislature that the Board of Trade, in sanctioning regulations of that kind, should have jurisdiction to determine what members of the public, if any, being neither travellers nor interested in goods traffic, shall have the right to use a station, or what facilities are to be allowed to those who are entitled to use it."

287. The following code of bye-laws has been adopted by the railway companies subject to the approval of the Ministry of Transport:—

#### BYE-LAWS AND REGULATIONS.

Made by the ——— Railway Company (hereinafter referred to as "the company") with the approval of the Minister of Transport.

For regulating the travelling upon and using and working of, and for maintaining order in and upon the company's railways (hereinafter referred to as "the railway"), which expression means and includes all and each of the railways, railway stations and approaches thereto and all and each of the works and premises belonging to or leased to or in the occupation or under the management or control of or worked by the company, and with respect to which the company has power to make bye-laws and regulations, and also all and each of the works by the company's special Acts authorised to be constructed, and also (so far as such bye-laws and regulations are applicable) the trains of the company conveying traffic on or over the railways of any other company.

1. Any person offending against any of the following bye-laws numbered, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, 21, 22 and 23 respectively, shall be liable for every such offence to a penalty

Chap.  
XXVII.  
Art. 207.

not exceeding forty shillings for a first offence, and not exceeding five pounds for any subsequent offence; and any person offending against either of the following bye-laws and regulations numbered 16 and 18 respectively, shall be liable for every such offence to a penalty not exceeding five pounds.

2. No person shall enter any carriage or vehicle upon the railway, for the purpose of travelling, unless and until he or someone on his behalf shall have obtained from the company, or from some other company or person duly authorised in that behalf by the company, a ticket entitling him to travel therein. Any person offending against this bye-law and failing to leave the carriage or vehicle immediately on request by any servant or agent of the company, may be removed therefrom by or under the direction of such servant or agent.

In the case of *Butler v. M. S. & L. Ry. Co.*, 21 Q. B. D. 207; 57 L. J. Q. B. 564, which was decided under a former bye-law, which contained no reference to the removal of a passenger, where the expression used was "unless furnished with a ticket," the Court of Appeal decided that where a railway passenger had taken and paid for his ticket, but had afterwards lost it, and had declined to pay the fare again, the company could not eject him from the railway carriage, but, assuming the condition to be reasonable, could only take his name and address and sue him for the fare.

A railway company are not liable in an action for assault and false imprisonment, by reason of one of their servants giving a passenger into custody, if the act is done in contravention of instructions and beyond the scope of the employment. *Walker v. S. E. Ry. Co.*, L. R. 5 C. P. 640; 39 L. J. C. P. 346.

It is to be noted, however, that the new form of bye-laws now issued by the Minister of Transport provides, in No. 2, that a passenger offending against such bye-law may be removed by "any" servant of the railway company, the words "duly authorised" being omitted.

A foreman porter, who, in the absence of the station-master, is in charge of a station, has no implied authority to give in charge a person whom he suspects to be stealing the company's property;



Chap.  
XXVII.  
Art. 227.

and, if he gives in charge on such suspicion an innocent person, the company are not liable. *Edwards v. L. & N. W. Ry. Co.*, L. R. 5 C. P. 445; 39 L. J. C. P. 241.

A passenger in a railway carriage was ordered to leave it by the company's servants under circumstances which did not justify them in what they were doing; and it appeared that upon leaving the carriage he left a pair of race-glasses upon the seat, which, as the train proceeded without him, were lost. The Court held that the loss of these glasses was not the natural result of the wrongful act, and that the plaintiff could not recover their value. *Glover v. L. & S. W. Ry. Co.*, L. R. 3 Q. B. 25; 37 L. J. Q. B. 57.

In the case of *Saunders v. S. E. Ry. Co.*, 5 Q. B. D. 456; 49 L. J. Q. B. 761, a bye-law of the defendant company provided "that a passenger should show and deliver up his ticket to any duly authorized servant of the company whenever required to do so for any purpose; and that any person travelling without a ticket, or failing or refusing to show or deliver up his ticket as aforesaid, should be required to pay the fare from the station where the train originally started to the end of his journey." The plaintiff had a ticket entitling him to travel on the lines of the defendants and the London and South Western Railway Company from Charing Cross or Cannon Street to Windsor and back. Having come to the Waterloo Junction Station on the defendants' line, where he had to change trains, he had for this purpose to go from the defendants' station to that of the London and South Western Railway Company. On passing out of the defendants' station he was asked to show his ticket, but refused to do so. There was no intention to defraud on the plaintiff's part. The defendants summoned him under the above bye-law, and he was convicted in the amount of the fare from the station whence the defendants' train by which he travelled had started. The Court held that the conviction must be quashed.

A bye-law was made by a railway company, under the powers of their special Act and of the Railways Clauses Act, 1845, s. 108, in the terms following:—"Any person travelling, without the

Chap.  
XXVII.  
Art. 207.

special permission of some duly authorized servant of the company, in a carriage or by a train of a superior class to that for which his ticket was issued, is hereby subject to a penalty not exceeding 40s., and shall in addition be liable to pay his fare, according to the class of carriage in which he is travelling, from the station where the train originally started, unless he shows that he had no intention to defraud." Held, first, that the bye-law taken as a whole was void, on the ground that the penalty imposed by the latter part was unreasonable. Secondly, that the bye-law was divisible, and that the first part of the bye-law omitted the intention to defraud required by sect. 103 of the Railways Clauses Act, 1845, to constitute the offence. It was therefore repugnant to the statute and invalid. *Dyson v. L. & N. W. Ry. Co.*, 7 Q. B. D. 32; 50 L. J. M. C. 78.

The above bye-law, while not in terms referring to the class of carriage in which a passenger is entitled to travel, presumably requires the ticket taken to correspond to the class in which the holder is travelling. Under the corresponding bye-law in the old code, which required the ticket to specify the class, a passenger was convicted in a penalty of 10s. under this bye-law for travelling in a first-class carriage with only a second-class ticket; but it was found as a fact that he had no intention to defraud the company. The Court held that the conviction must be quashed, for without deciding whether the bye-law did or did not make proof of the absence of fraudulent intention an exemption from the penalty as well as from the extra fare, it was, if it made the fraudulent intention immaterial in the case of the penalty, repugnant to the Railways Clauses Act, 1845, s. 103, and *ultra vires* the company. *Bentham v. Hoyle*, 3 Q. B. D. 289; 47 L. J. M. C. 51; and see *Barney v. Mid. Ry. Co.*, Ir. L. R. 1 C. L. 130.

A tramway company made a bye-law by which it was provided that "each passenger shall show his ticket (if any) when required to do so to the conductor, or any duly authorised servant of the company, and shall also, when required to do so, either deliver up his ticket or pay the fare legally demandable for the

Chap.  
XXVII.  
Art. 287.

distance travelled over by such passenger." A passenger who had paid his fare lost his ticket, and was in the course of the journey called upon by a ticket inspector to produce his ticket, pay his fare or leave the car, but not in so many words to "deliver up his ticket or pay his fare." Held, that by his refusal to comply with the inspector's request the passenger had infringed the above bye-law. *Hunt v. Green*, 96 L. T. 23; 23 T. L. R. 19.

A bye-law was made by a railway company, under the powers of their special Act and of the Railways Clauses Act, 1845, in the terms following:—"No passenger will be allowed to enter any carriage on the railway, or to travel therein upon the railway, unless furnished by the company with a ticket specifying the class of carriage and the stations for conveyance between which such ticket is issued. . . . Any person travelling without a ticket, or failing or refusing to show or deliver up his ticket as aforesaid, shall be required to pay the fare from the station whence the train originally started to the end of the journey." Held, that in order to entitle the railway company to take proceedings before justices under this bye-law, a demand of the specific sum payable in respect of such fare must have been first made to the passenger who refused or was unable to produce his ticket. *Brown v. G. E. Ry. Co.*, 2 Q. B. D. 406; 46 L. J. M. C. 231.

A bye-law of a railway company ran thus: "Each passenger booking his place will be furnished with a ticket, which he is to show and deliver up when required to the guard, &c.," and "each passenger not producing or delivering up his ticket when required is hereby subjected to a penalty not exceeding 40s.;" and it was held that under this bye-law holders of annual tickets for travelling on the line are bound to produce their tickets to the railway officers as much as ordinary passengers. *Woodard v. Eastern Counties Ry. Co.*, 30 L. J. M. C. 196.

In *Jennings v. G. N. Ry. Co.*, L. R. 1 Q. B. 7; 35 L. J. Q. B. 15, the bye-law was as follows:—"No passenger shall be

allowed to enter any carriage without having first paid his fare and obtained a ticket. Each passenger on payment of his fare will be furnished with a ticket, which such passenger is to show when required, and to deliver up, before leaving the company's premises, upon demand." The plaintiff took tickets for himself, his servants and horses, by a particular train, on the defendants' railway. The train was afterwards divided into two. The plaintiff travelled in the first train, taking all the tickets with him. When the second train with the servants and the horses was about to start, the plaintiff's servants were required to produce their tickets, and on their being unable to do so, the defendants refused to carry them. The Court held, in an action by the plaintiff for not carrying his servants, that as the defendants contracted with the plaintiff, and delivered the tickets to him, and not to the servants, the defendants could not under the bye-law justify their refusal to carry.

Chap.  
XXVII.  
Art. 207.

A railway company's regulations sometimes provide that the ticket office shall be closed a certain time before the starting of each train. Such regulations are reasonable as tending to obviate confusion.

Lord's Ardmillan and Neaves held, in the case of *Scottish N. E. Ry. Co. v. Matthews*, 5 Irvine, 237; Deas. p. 499, that if a person who has arrived at the station too late to take a ticket seat himself in the train while it is standing at the station, the company are justified in refusing to allow him to remain, although he tenders payment of the fare.

A light railway company made a bye-law to the effect that "each passenger shall upon demand pay to the conductor or other duly authorised officer of the company the fare legally demandable for the journey." Held, the bye-law was good. *Tuffley v. Tate*, 96 L. T. 24.

3. At all intermediate stations fares will be received and tickets issued conditionally only on there being room in the train for which such tickets shall be issued. In case there shall not be sufficient

Chap.  
XXVII.  
Art. 287.

room for all the passengers to or for whom any such tickets shall have been issued, the holders of such as shall be for the longest distances shall, as far as reasonably practicable, have the preference, and the holders of such as shall be for the same distance shall, as far as reasonably practicable, have priority according to the order in which such tickets shall have been issued, as denoted by the numbers stamped thereon. The company are not, however, to be deemed to undertake that such order of preference or priority shall be adhered to

4. When the fare to an intermediate station exceeds the fare to a more distant station, no person shall, for the purpose of travelling to such intermediate station, take or use or attempt to use a ticket for the more distant station, with intent to avoid payment of the additional fare to such intermediate station. The liability to or infliction of any penalty incurred by the infraction of this bye-law shall not prejudice any right of the company to treat such ticket as forfeited and to recover the full fare for the distance actually travelled by the offender.

A passenger took a tourist ticket from L. to S., for which he paid 8s., the ticket containing a condition that if used for any other station it would be forfeited *and the full fare charged*. He alighted at F., an intermediate junction, and took another ticket from F. to a station on a branch line.

The full fare from L. to F. was 9s., for which the plaintiffs brought an action in the County Court, where they were nonsuited on the ground that they were suing for a penalty only recoverable before justices. A Divisional Court held that the action could be maintained, inasmuch as the plaintiffs were not suing to recover a penalty, but to recover a fare under their contract with the defendant. *G. N. Ry. Co. v. Winder*, [1892] 2 Q. B. 595.

The defendant, a passenger on the plaintiffs' railway, took a special excursion ticket entitling her to travel from P. to W. at a fare considerably lower than the ordinary fare; the ticket contained a condition that if used for any other station it would be forfeited and the full fare charged. The defendant travelled to, and returned from, H., a station beyond W., paying the ordinary

Chap.  
XXVII.  
Art. 207.

fare for the journeys between W. and H.; the total amount paid by the defendant was much less than the ordinary return fare from P. to H. It was held by a Divisional Court (Wills and Wright, JJ.), on appeal from the County Court, that the condition was applicable to stations beyond that named on the ticket as well as to intermediate stations; that the defendant had used a ticket for a journey to a station other than that named on it, and not merely for a journey to the station for which it was available, and that the plaintiffs were therefore entitled to treat the ticket as forfeited. The point as to whether the condition was brought home to the defendant was not before the Court, since it had not been raised in the County Court. *G. N. Ry. Co. v. Palmer*, [1895] 1 Q. B. 862; 64 L. J. Q. B. 316; 72 L. T. 287.

A passenger intended to travel on the plaintiffs' railway from H. to M., but only took a ticket, upon which was a reference to an analogous bye-law, to S., an intermediate station. On arriving at S., he, without leaving the carriage, gave up the ticket from H. to S. and tendered 7*d.*, being the correct fare from S. to M. The difference between the through fare from H. to M. and the fare from H. to S. was, however, 9*d.* The railway company refused the 7*d.* tendered by the defendant and sued him for the sum of 9*d.*, being the above-mentioned difference between the through fare and the fare already paid. The Divisional Court held that the company were entitled to recover the amount sued for. *L. & N. W. Ry. Co. v. Hinchcliffe*, [1903] 2 K. B. 32; 72 L. J. K. B. 530.

5. No person shall alter, deface, mutilate or destroy any passenger ticket, season ticket, dog ticket or bicycle ticket after it has been issued and whilst it is available for use, with intent to enable the company to be defrauded or prejudiced; or knowingly and wilfully use or attempt to use any such ticket which shall have been in any respect materially altered, defaced, or mutilated.

6. No person shall buy or receive or sell or transfer, or attempt to buy or receive or sell or transfer, from or to any other person, any

Chap.  
XXVII.  
Art. 287.

passenger ticket, season ticket, dog ticket, bicycle ticket or book of passenger tickets, or any portion separately from another portion of any such ticket or book, with intent that any person shall use the same for the purpose of travelling upon the railway (whether such ticket or book or portion thereof be partly used or not) or knowingly and wilfully use or attempt to use any such ticket or book or portion thereof which has been so bought, received or sold or transferred, unless such ticket or book or portion thereof shall at the time of the issuing of the same purport to be transferable.

7. When a carriage or compartment of a carriage upon the railway contains the full number of passengers which it is constructed to carry, no additional person shall enter or remain therein if requested by any passenger therein or by a guard of the train or any servant or agent of the company not to do so. Any person offending against this bye-law and failing to quit such carriage or compartment immediately on request by such guard, servant, or agent, may be removed therefrom by or under the direction of such guard, servant, or agent, without prejudice to any penalty incurred by the infraction of this bye-law.

8. Except by permission of a guard of the train, no person of the male sex above, or apparently above, the age of eight years shall travel or attempt to travel or remain in any carriage or compartment of a carriage marked or notified as being reserved or appropriated for the exclusive use of persons of the female sex. Any person offending against this bye-law and failing to quit such carriage or compartment immediately on request by a guard of the train or any servant or agent of the company, may be removed therefrom by or under the direction of such guard, servant, or agent, without prejudice to any penalty incurred by the infraction of this bye-law.

9. No person, except a servant or agent of the company in the performance of his duty, shall mount or attempt to mount on any railway engine or on the roof of any wagon, carriage, or vehicle upon the railway, or travel or attempt to travel on or in any luggage or guard's van or wagon, or on or in any carriage or vehicle not provided for conveyance of passengers, or on the step or footboard or any part of any wagon, carriage, or vehicle other than a part provided for the conveyance of passengers. Any person offending against this bye-law and failing to desist immediately on request by any servant or agent of the company, may be removed from the engine, van, wagon, carriage, or vehicle, or from the railway, by or

under the direction of such servant or agent, without prejudice to any penalty incurred by the infraction of this bye-law.

10 No person, except a servant or agent of the company in the performance of his duty, shall open or attempt to open any gate or door of any lift-shaft or lift, or enter or leave, or attempt to enter or leave any lift which is in motion, or otherwise than at the place appointed for passengers to enter or leave the same.

11. No person, except a servant or agent of the company in the performance of his duty, shall open the door, or stand or attempt to stand on the step or footboard of any carriage or vehicle upon the railway whilst it is in motion or between stations: or enter or leave or attempt to enter or leave any such carriage or vehicle whilst it is in motion or between stations, or otherwise than at the side of the carriage or vehicle adjoining the platform or place appointed for passengers to enter or leave the train: and where in any such carriage or vehicle one door is indicated by notice for entrance thereto and another door for exit therefrom no person shall enter or leave or attempt to enter or leave such carriage or vehicle except by the door indicated for entrance or exit respectively.

12 Except by permission in writing of a station master or other officer of the company, duly authorised in that behalf, no person suffering or apparently suffering from any infectious or contagious disease or disorder shall enter or remain and no person having the custody, charge or care of any such person shall cause or permit such person to enter or remain in or upon the railway, or in any carriage upon the railway; and the company may refuse to receive or carry any such person, or to permit any such person to enter, remain, or be in or upon the railway, or in any such carriage, or to travel on the railway. Any person offending against this bye-law may be removed from any such carriage, or from the railway, by or under the direction of any servant or agent of the company, and shall be liable to the company for the cost of disinfecting the company's premises and any carriage in which such person shall have been, and to make good any other damage to the property of the company through the infraction of this bye-law, without prejudice to any penalty incurred by such infraction.

13. No person in a state of intoxication, or otherwise in an unfit or improper condition for being a passenger, or whose dress or clothing might in the opinion of any guard of the train soil or injure the linings or cushions of any carriage, or the dress or clothing of



Shap.  
XXVII.  
Art. 297.

any passenger, shall enter or remain in or upon the railway or in any carriage upon the railway. Any person offending against this bye-law and failing to quit the railway or any such carriage, immediately upon request by any servant or agent of the company may be removed therefrom by or under the direction of such servant or agent, without prejudice to any penalty incurred by the infraction of this bye-law.

14. No person shall at any time while in or upon the railway or in any carriage or vehicle upon the railway, use any threatening, abusive, indecent, obscene, profane, or offensive language, or behave in a riotous, disorderly, indecent, or offensive manner, or write, draw, or affix any abusive, indecent, obscene, profane, or offensive word, representation, or characters, or commit any nuisance in, upon, or against any part of the railway or of such carriage or vehicle, or molest or wilfully interfere with the comfort or convenience of any passenger or person on the railway. Any person offending against this bye-law, and failing to quit the railway or such carriage or vehicle immediately upon request by any servant or agent of the company, may be removed therefrom by or under the direction of such servant or agent, without prejudice to any penalty incurred by the infraction of this bye-law.

15. Except by permission of a guard of the train, no person shall take or attempt to take or cause to be taken any dog, bird, reptile, or other animal, or any article or thing which is liable to cause inconvenience or annoyance to any passenger or damage to property into any passenger carriage upon the railway; and, notwithstanding any such permission, no person shall cause or allow the same to remain in any such carriage after having been requested not to do so by any passenger therein or by any servant or agent of the company. Any person offending against this bye-law and failing to remove such animal, article or thing from the carriage immediately upon request by any servant or agent of the company may be removed therefrom by or under the direction of such servant or agent, without prejudice to any penalty incurred by the infraction of this bye-law.

*Cf. Lawton v. G. W. Ry. Co.*, 37 T. L. R. 934.

16. No person shall take into, or place in or upon or cause to be taken into or placed in or upon, the railway or any carriage or vehicle upon the railway, any loaded fire-arm, loaded gun, or loaded weapon

Chap.  
XXVII.  
Art. 207.

of any kind; or any article or thing which is or may become dangerous to any passenger or property; nor shall any person, except by permission in writing of an officer of the company duly authorised in that behalf, take into or place in or upon or caused to be taken into or placed in or upon the railway or any such carriage or vehicle any inflammable, explosive, corrosive, noxious, or offensive gas, spirit, liquid, substance, or matter. But nothing in this bye-law shall apply to small quantities of spirit or liquid carried for the personal use of such person, and not for the purpose of trade or business, provided that all due precautions are taken for the prevention of accident, injury or annoyance therefrom. Any person offending against this bye-law and persisting in so offending after being once warned by any passenger or servant or agent of the company to desist and failing to quit the railway or any such carriage or vehicle immediately upon request by any servant or agent of the company, may be removed therefrom by or under the direction of such servant or agent without prejudice to any penalty incurred by the infraction of this bye-law.

17. No person shall smoke in any carriage or compartment of a carriage upon the railway not provided for smoking; or in or upon any part of the railway where smoking is expressly prohibited by the company; or elsewhere in or upon the railway if requested by any servant or agent of the company not to do so. Any person, offending against this bye-law and persisting in so offending after being once warned by any passenger or servant or agent of the company to desist, and failing to quit such carriage, compartment, or place immediately upon request by any servant or agent of the company, may be removed therefrom, or from the railway, by or under the direction of such servant or agent, without prejudice to any penalty incurred by the infraction of this bye-law.

18. No person shall wilfully, wantonly, or maliciously move or set in motion any lift, carriage or vehicle upon the railway or break, cut, scratch, tear, soil, deface or damage any such lift, carriage or vehicle, or any of the fittings, furniture, decorations, or equipment thereof, or any notice, advertisement, number-plate, number, figure, or letter therein or thereupon or remove any such article or thing therefrom, or deface or damage any property (whether real or personal) belonging to the company, or upon the railway. Any person offending against this bye-law shall be liable to the company for the amount of the damage done, without prejudice to any penalty incurred by the infraction of this bye-law.

chap.  
XXVII.  
Art. 287.

19. Except by permission of an officer of the company duly authorized in that behalf, no person while in or upon the railway, or in any carriage or vehicle thereon, shall hawk, sell, or expose or offer for sale any article or goods whatsoever, or tout, ply for, or solicit alms, reward, or custom, or employment of any description. Any person offending against this bye-law after having been once warned by any servant or agent of the company to desist, may be removed from such carriage or vehicle or from the railway by or under the direction of any servant or agent of the company, without prejudice to any penalty incurred by the infraction of this bye-law.

20. No person shall enter or remain in or upon or use the railway or any carriage or vehicle thereon for the purpose of playing for money or money's worth at the three card trick or at any game or pretended game of chance or skill, or bookmaking, or betting, or wagering, or agreeing to bet or wager with any other person; or without lawful excuse (the proof whereof shall lie on the person charged) enter, loiter, or remain in or upon the railway or any carriage or vehicle upon the railway. Any person offending against this bye-law after having been once warned by any servant or agent of the company to desist, may be removed from such carriage or vehicle or from the railway by or under the direction of any servant or agent of the company, without prejudice to any penalty incurred by the infraction of this bye-law.

21. No person shall throw or drop from any carriage or vehicle on the railway, a bottle of any kind, or any article or thing whatsoever capable of injuring, damaging, or endangering any person or property.

22. No driver, conductor or person in charge of any omnibus, motor car, cab, carriage, wagon, bicycle or other vehicle or of any animal in or upon the railway shall leave any such vehicle or animal in or upon the railway unattended or for a period longer than necessary for such person to transact any lawful business upon the railway or in any manner or place so as to cause an obstruction or hindrance to the company or to persons using the railway, or fail to conduct himself in an orderly manner, and obey every reasonable direction of any servant or agent of the company.

Any vehicle or animal so left in breach of this bye-law may be removed from the railway by or under the direction of any servant or agent of the company at the sole risk and expense of the owner of such vehicle or animal: and any person offending against this

bye-law, after having been once warned by any servant or agent of the company to desist, may be removed from the railway by or under the direction of any servant or agent of the company, without prejudice to any penalty incurred by the infraction of this bye-law.

Chap. .  
XXVII.  
Art. 227.

23. No person shall spit upon the floor or upon any part of any carriage or vehicle upon the railway, or upon the platform at any station of the company, or upon the floor, side, or wall of any hall, office, waiting room, refreshment room, public room, or public passage at any station of the company. Any person offending against this bye-law and failing to desist immediately upon request by any servant or agent of the company, may be removed from such carriage, or from the railway, by or under the direction of any such servant or agent, without prejudice to any penalty incurred by the infraction of this bye-law.

Given under the Common Seal of the — Railway Company, the  
— day of —.

It is not a libel for a railway company to publish a strictly accurate account of the conviction of persons for offences against these bye-laws, &c., even if they add the name and address. *Alexander v. N. E. Ry. Co.*, 34 L. J. Q. B. 152; *Biggs v. G. E. Ry. Co.*, 16 W. R. 908; *Buchan v. N. B. Ry. Co.*, 21 Sess. Ca. (4th series), 379.

## CHAPTER XXVIII.

## LIABILITY FOR NEGLIGENCE.

## I.—NATURE OF LIABILITY.

Chap.  
XXVIII.  
Art. 288.

288. Railway companies as carriers of passengers are not insurers, but are bound to exercise proper care and forethought for securing the safety of their passengers, and are answerable to them for negligence on the part of their servants and agents; but not for unforeseen accidents which care and vigilance could not have provided against or prevented: *Christie v. Griggs*, 2 Camp. 79; *Jackson v. Tollett*, 2 Stark. 37; *Dudley v. Smith*, 1 Camp. 167; *East Indian Ry. Co. v. Kalidas Mukerjee*, [1901] A. C. 396; 70 L. J. P. C. 63; or which are due to acts of persons over whom they have no control. *Daniel v. Met. Ry. Co.*, L. R. 5 H. L. 45; see *Adderley v. G. N. Ry. Co. of Ireland*, [1905] 2 Ir. R. 378.

A railway company do not warrant that a carriage in which a passenger travels is free from all defects likely to cause peril, and are not responsible to the passenger for defects which could neither be guarded against in the process of construction, nor discovered by subsequent examination. *Readhead v. Midland Ry. Co.*, L. R. 4 Q. B. 379; 38 L. J. Q. B. 169.

Carriers of passengers by railway contract that all persons connected with the carrying and with the

means and appliances of the carrying, such as the carriages, the railroad, or signalling, shall use care and diligence; but they do not contract that other railway companies who may be entitled to use the railway shall not be guilty of negligence in the management of their trains. *Wright v. Midland Ry. Co.*, L. R. 8 Ex. 137; 42 L. J. Ex. 89.

Chap.  
XXVIII.  
Art. 988.

The contract into which a railway company enters with a passenger on giving him a ticket between two places is the same (in the absence of any stipulation to the contrary), whether the journey be entirely over their own line or partly over the line of another company, and whether the passage over the other line be under an agreement to share profits, or simply under running powers: viz., that due care (including in that term the use of skill and foresight) shall be used in carrying the passenger from one end of the journey to the other, so far as is within the compass of railway management. *Thomas v. Rhymney Ry. Co.*, L. R. 6 Q. B. 266; 40 L. J. Q. B. 89.

The liability of the company is independent of any contract between the passenger and the company, the law implying a duty on the part of the company to carry him safely if they permit him to travel. *Foulkes v. Met. Dist. Ry. Co.*, 5 C. P. D. 157; 49 L. J. C. P. 361.

The application of these principles to the carriage of passengers by road are dealt with at p. 573, *post*.

The facts in *Foulkes v. Met. Dist. Ry. Co.*, *supra*, were these:—

The defendants had running powers between H., a station upon their own line, and R., a station of the S. company, over the line of that company. The defendants and the S. company divided

Chap.  
XXVIII.  
Art. 288.

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the profits of the traffic between H. and R. The plaintiff took a return ticket from R. to H., which was issued to him by a clerk of the S. company. Upon the return journey from H. to R. he travelled in a train belonging to the defendants, and driven by their servants. Owing to the carriage being unsuited to the platform at R., which belonged to the S. company, the plaintiff sustained bodily injury. At the trial the jury found that the defendants had been guilty of negligence, and the Court of Appeal held that an action lay against the defendants, for they, having permitted the plaintiff to travel by their train, were bound to make provision for his safety.

Hence a railway company are liable, in the absence of special conditions (see *The Stella*, [1900] P. 161; 69 L. J. P. 70), for personal injuries caused by negligence to a person travelling with a free pass (*G. N. Ry. Co. v. Harrison*, 10 Ex. 376; 23 L. J. Ex. 308); to a post-office servant travelling with the mails (*Collett v. L. & N. W. Ry. Co.*, 20 L. J. Q. B. 411); and to a child carried free in accordance with the provisions of a railway company's special Act. *Austin v. G. W. Ry. Co.*, L. R. 2 Q. B. 442.

Where a passenger is killed or injured by reason of dangerous articles being brought by other passengers into the train in which he is travelling, the onus of proof is on the plaintiff, in an action for negligence against the railway company, to show that the company were guilty of negligence in allowing such articles to be brought into the train, and that the appearance of such articles suggested danger. *East Indian Ry. Co. v. Kalidas Mukerjee*, [1901] A. C. 396; 70 L. J. P. C. 63.

The obligation of a railway company extends, it seems, to everything except latent defects which could not by any reasonable diligence or skill be discovered.

The case of *Richardson v. G. E. Ry. Co.*, 1 C. P. D. 342, may be cited as an instance of alleged negligence in allowing an unsound truck to travel on the line without due examination. The facts in that case were these:—A foreign truck, loaded with coal, belonging to the B. Wagon Company, came on to the defen-

Chap.  
XXVIII.  
Art. 209.

dants' line at Peterborough, and there underwent the usual examination, when a defect in one of the springs and a crack in the woodwork were discovered. The truck was shunted, upon the discovery of the defects, in order that it might be repaired by the wagon company to whom it belonged. The defect in the spring, which was the only pressing defect, was repaired, and the truck was handed over to the defendants, and sent on by them to its destination. On the way an accident, by which the plaintiff was injured, happened through the existence of a crack in one of the axles of the truck. It was stated in evidence that by a minute examination of the truck the crack in the axle might have been discovered. The defect in the axle was entirely unconnected with the defects previously discovered. The Court of Appeal held that the defendants were not bound to do more in the way of examining the foreign truck on its arrival at Peterborough than they had done, and inasmuch as the defects discovered on such examination were entirely unconnected with the defect that caused the accident, they were not responsible by reason of their failing upon the discovery of such defects to enter upon a more minute examination of the truck. Cf. also *Gilbert v. N. L. Ry. Co.*, Cab. & Ell. 31.

In *McCawley v. Furness Ry. Co.*, L. R. 8 Q. B. 57; 42 J. Q. B. 4, Blackburn, J., said, at p. 5 of the L. J. Report: The duty of the defendants, as carriers of passengers, is to take reasonable care that such passengers shall not be exposed to danger during the journey. If, through the want of due care, the passenger is killed or injured, the carrier is liable to make compensation, and may even be made criminally responsible."

On the other hand, the following cases may be taken as instances where the railway company have been held to be guilty negligence.

The driver of an engine, while passing a platform, put on steam in such volume that large quantities of live cinders and it were driven from the funnel and fell upon children standing



Chap.  
XXVIII.  
Art. 200.

on the platform and injured them. *Gray v. Cal. Ry. Co.*, [1912] S. C. 339.

On a foggy night the lumps on the platform did not show through the fog, and the plaintiff fell off and was injured. Several other passengers had fallen off on the same evening. *London, Tilbury & Southend Ry. Co. v. Paterson* (1913), 29 T. L. R. 413.

A passenger while standing on a platform at a station was struck and injured by an open carriage door, which had been left open when the train started to leave the station. *Toul v. N. B. Ry. Co.*, [1908] A. C. 352; 77 L. J. P. C. 119; 45 Scot. L. R. 683; and *Burns v. N. B. Ry. Co.*, [1914] S. C. 754.

So, too, where a passenger alleged that he had nearly fallen out of the carriage and had suffered from nervous shock by reason of the flying open of the carriage door, it was held that there was a ground of action disclosed, and that the case ought to go for trial. *Fowler v. N. B. Ry. Co.*, [1914] S. C. 866.

The duty of a railway company to its passengers and its liability for the acts of other passengers was considered in *Pounder v. N. E. Ry. Co.*, [1892] 1 Q. B. 385; 61 L. J. Q. B. 136. In that case the plaintiff had been employed in the eviction of pitmen from their houses, and had thereby incurred the ill-will of the pitmen in the neighbourhood in which he was travelling. When he took his ticket the defendants' servants had no notice that he was exposed to greater danger than one of the ordinary travelling public: but, before the train started, he was threatened, in the hearing of some of the defendants' servants, with violence by a number of pitmen at the station, and got into the guard's van for safety; he was removed and placed in a third class carriage by the defendants' servants, who at this time knew that he had been engaged in the evictions and feared violence from the pitmen. Certain pitmen then crowded into the compartment in which he was, thereby greatly overcrowding it; but the defendants' servants, when applied to by him, did nothing towards getting the pitmen out or to get the plaintiff a seat in another

carriage. He was assaulted and injured by the pitmen during the journey to the first station at which the train stopped; at that station the pitmen got out of the compartment and others got in and repeated the assaults upon him. This happened at each station at which the train stopped, and at each station he complained of the assaults to the guard, who did nothing to secure his safety. A Divisional Court (Mathew and A. L. Smith, JJ.) held that the company were not liable for the damage done to the plaintiff.

Chap.  
XXVIII.  
Art. 259.

The Court appears to have based its judgment on the fact that when the plaintiff took his ticket the company's servants had no notice that he was in danger of being attacked. A. L. Smith, J., said, at p. 388 of the L. R.: "What is the duty of a railway company to its passengers? It arises out of the contract, and must be determined upon the facts known to the contracting parties at the time of the contract. . . . There is no duty in these circumstances to take extraordinary care of a passenger by reason of any unknown peculiarity *then* attaching to him."

Mathew, J., said, at p. 390: "The railway company are bound to take reasonable care for the safety of their passengers. The controversy was as to how that reasonable care was to be measured, and I am clearly of opinion that it can only be ascertained by reference to the ordinary incidents of a railway journey, and by reference to what must be taken to have been in the contemplation of the parties when the contract of carriage was entered into." It is, however, with deference, submitted that it might also have been the duty of the railway company to have protected the plaintiff whilst travelling on their line from the series of assaults made upon him in view of the facts that he was threatened in the hearing of the company's servants, and was, in fact, removed by them from the guard's van in which he had taken refuge.

In America, in a case where the facts were analogous to those in *Pounder v. N. E. Ry. Co.*, *ante*, the Supreme Court of Mississippi held the railroad company to be liable, see *New Orleans, St. Louis & Chicago Ry. Co. v. Burke*, 24 Am. Rep. 689, and the

Chap.  
XXVIII.  
Art. 288.

authority of the English case may be doubted. Cf. the *dictum* of Lord Esher, M. R., in *Cobb v. G. W. Ry. Co.*, [1893] 1 Q. B. 459, *infra*.

In *Cobb v. G. W. Ry. Co.*, [1893] 1 Q. B. 459; 62 L. J. Q. B. 335, the plaintiff, while the train in which he was travelling was standing at a station, was robbed by a gang of men, who then left the carriage. He complained to the station master, who refused to detain the train. The plaintiff was carried on by the train, and was unable to recover his property. The Court of Appeal decided that the plaintiff had no cause of action against the company, inasmuch as the company's undertaking was to carry the plaintiff safely, and there was no obligation imposed on the station-master as the servant of the company to detain the train.

Lord Esher, M. R., added, at p. 462: "It is not alleged that the plaintiff was being ill-used or assaulted in the train, and that that fact being made known to the defendants' servants, they did not interfere to protect him. *That would be a different case.*"

In the same case the plaintiff alleged that the railway company had negligently permitted the carriage in which he had travelled to be overcrowded, thus facilitating the robbery, and claimed to recover the amount of which he had been robbed as damages from the company. It was held that the damage alleged was too remote. Lord Esher, M. R., said, at p. 463: "It cannot be considered as the probable and ordinary result of allowing a compartment of a railway carriage to be overcrowded that a passenger should be robbed by his fellow-passengers."

In the Irish case of *Adderley v. G. N. Ry. Co. of Ireland*, [1905] 2 Ir. R. 378, the plaintiff, while travelling on the defendants' line, was injured as a result of the action of a drunken man at a station at which the train had stopped. The man had been seen obviously drunk outside the station, but there was no evidence to show that there was anything in his conduct to attract the attention of the ticket-collector who allowed him to come on the platform. At the trial Kenny, J., left certain questions to the

jury, upon the assumption that the man when visibly drunk having been permitted to enter the station, the railway company became responsible for everything he did. The Court of Appeal in Ireland held that this placed the duty of the defendants at too high a standard, and granted a new trial.

Chap.  
XXVIII.  
Art. 288.

The following case may be referred to in this connection. A plaintiff claimed damages for personal injuries to himself, alleging that his mother, while he, the plaintiff, was *en ventre sa mère*, was injured when travelling on the defendants' railway, and that as a result he, the plaintiff, was wounded and permanently crippled. The Irish Court held that no cause of action was disclosed. *Walker v. G. N. Ry. Co. of Ireland*, 28 L. R. Ir. 69.

289. An action brought against a railway company by a passenger for personal injury caused by the negligence or misfeasance of a servant of the company is an action founded upon tort and not upon contract, even though the passenger has taken a ticket. *Taylor v. M. S. & L. Ry. Co.*, [1895] 1 Q. B. 134; 64 L. J. Q. B. 6; *Kelly v. Metropolitan Ry. Co.*, [1895] 1 Q. B. 944; 64 L. J. Q. B. 568; see also *Meux v. G. E. Ry. Co.*, [1895] 2 Q. B. 387; 64 L. J. Q. B. 657.

In both *Taylor's Case* and *Kelly's Case* the immediate point for decision was the scale of costs to be given to a successful plaintiff. It had been thought that the effect of the earlier decision (*Taylor's Case*) was to limit the rule to cases of active negligence or misfeasance on the part of the company's servants, but the principle was further explained in *Kelly's Case* by A. L. Smith, L. J., who had been a member of the Court which had decided *Taylor's Case*, as follows, at p. 947:—"The distinction is this: if the cause of complaint be for an act of omission or nonfeasance which, without proof of a contract to do what has

Chap.  
XXVIII.  
Art. 299.

been left undone, would not give rise to any cause of action (because no duty, apart from contract to do what is complained of, exists), then the action is founded upon contract and not upon tort. If, on the other hand, the relation of the plaintiff and the defendants be such that a duty arises from that relationship, irrespective of contract, to take due care, and the defendants are negligent, then the action is one of tort."

The case of *Alton v. Mid. Ry. Co.*, 34 L. J. C. P. 292; 19 C. B. (N. S. 213, was at one time thought to be an authority in favour of the view that an action by a passenger against a railway company must be founded on contract. A. L. Smith, L. J., in dealing with this case in his judgment in *Taylor v. M. S. & L. Ry. Co.*, *ante*, said, at p. 141: "It was there held that the master could not sue for injury to his servant caused by breach of a contract entered into between the servant and the company. No question was or could be raised as to what would have been the result if the servant's remedy against the company had been founded upon tort, for the case was, as I have already stated, decided upon demurrer to a declaration which expressly averred that the servant's rights against the company were founded upon contract. That case, when looked into, is not the authority which it was supposed to be, and in no way decides that an action brought for personal injury against a company by a passenger who has taken a ticket is necessarily an action founded upon contract and not upon tort."

See also *Lyles v. Southend-on-Sea Corporation*, [1905] 2 K. B. 1; 74 L. J. K. B. 484.

**290.** A railway company carrying passengers under a through booking or otherwise, partly by railway and partly by their own ships, are entitled to avail themselves of sect. 503 of the Merchant Shipping Act, 1894, and thereby limit their liability to the amount of 15*l.* per ton on the tonnage of the ship in the event of loss of life or personal injury occurring during the

sea portion of the transit. *L. & S. W. Ry. Co. v. James*, L. R. 8 Ch. 241; 42 L. J. Ch. 337.

Chap.  
XXVIII.  
Art. 200.

The provisions of sect. 503 of the Merchant Shipping Act, 1894, are set out on p. 163, *ante*.

291. If a railway company, through wrongful act, neglect, or default, cause the death of a person, they are liable to an action for damages notwithstanding the death of the person injured, provided the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof. The Fatal Accidents Act, 1846, amended by the Fatal Accidents Act, 1864.

The first of these Acts is called Lord Campbell's Act, and, although it is not in terms directed against railway companies, it has affected them more than any class of passenger carriers.

"Every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct." Fatal Accidents Act, 1846, s. 2.

"Not more than one action shall lie for and in respect of the same subject-matter of complaint; and every such action shall be commenced within twelve calendar months after the death of such deceased person." *Ibid.* sect. 3.

"In every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant

Chap.  
XXVIII.  
Art. 291.

or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered." *Ibid.* sect. 4.

"The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, . . . the word 'parent' shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word 'child' shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter." *Ibid.* sect. 5.

"If there shall be no executor or administrator of the person deceased, or, there being such executor or administrator, no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by and in the name of such executor or administrator." Fatal Accidents Act, 1864 (27 & 28 Vict. c. 95), s. 1.

"It shall be sufficient, if the defendant is advised to pay money into Court, that he pay it as a compensation in one sum to all persons entitled under the said Act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue." *Ibid.* sect. 2.

By the Fatal Accidents (Damages) Act, 1908, "in assessing damages in any action, whether commenced before or after the passing of this Act, under the Fatal Accidents Act, 1846, as amended by any subsequent enactment, there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of this Act."

The personal representatives of a deceased man cannot maintain an action under Lord Campbell's Act where the deceased, if he had survived, would not have been entitled to recover. *Haigh v. Royal Mail Steam Packet Co.*, 52 L. J. Q. B. 640.

But the damages recoverable by the personal representatives of a deceased workman are not limited by a condition that "the liability of the company under any claim to compensation for injury or otherwise is limited to the sum of 100*l.*," where his death was caused by the negligence of the company's servants. *Nunan v. Southern Ry. Co.*, [1924] 1 K. B. 223; 93 L. J. K. B. 140.

The plaintiff, as administrator, sued the defendants under the provisions of Lord Campbell's Act to recover damages for the death of his son, who had been killed by their negligence. At the trial the plaintiff gave evidence to the effect that he was nearly blind, and was injured in his leg and hands, and that the deceased was always very kind to him, and used to contribute to his support five or six years ago when he required it. The Court held, upon the above facts, that there was some evidence for the jury of a reasonable expectation of benefit from the continuance of the son's life, entitling the plaintiff to sue under the above Act. *Hetherington v. N. E. Ry. Co.*, 9 Q. B. D. 160; 51 L. J. Q. B. 495.

The numerous cases which have been decided under this Act are to be found in Roscoe's Nisi Prius Evidence and Browne and Theobald on Railways.

A sum of money was received from a railway company by way



Chap.  
XXVIII.  
Art. 201.

of compensation by the executors of a person whose death had resulted from injuries received in an accident on the railway, no action having been brought under Lord Campbell's Act. The executors brought an action in the Chancery Division, to which all the relatives of the deceased referred to in sect. 2 of Lord Campbell's Act were parties, asking for a declaration as to the persons entitled to the money. It was held that the Court could distribute the fund amongst such of the relatives of the deceased as suffered damage by reason of the death, in the same manner as a jury could have done in an action under the Act. *Bulmer v. Bulmer*, 25 Ch. D. 409.

The right to recover compensation by families of persons killed through negligence is limited to the actual pecuniary benefit they might reasonably have expected to enjoy had the deceased not been killed. A compassionate allowance cannot be added. *Royal Trust Co. v. Canadian Pacific Ry. Co.*, 38 T. L. R. 899.

**292.** A railway company as carriers of passengers being liable only for negligence and not as insurers of their absolute safety, may, by contracting that the passenger shall travel "at his own risk." except their liability for negligence. *McCawley v. Furness Ry. Co.*, L. R. 8 Q. B. 57; 42 L. J. Q. B. 4; *Hall v. N. E. Ry. Co.*, L. R. 10 Q. B. 437; 44 L. J. Q. B. 164.

Provided that in the case of an infant passenger such special contract is not detrimental to him. *Flower v. L. & N. W. Ry. Co.*, [1894] 2 Q. B. 65; 63 L. J. Q. B. 547.

Where a passenger travels on a railway or on a steamer belonging to a railway company at his own risk, the exemption from liability on the part of the railway company extends, not only to the actual

transit, but to risks incurred on the premises of the company in coming to and going from the points to which the contract to carry applies. *Gallin v. L. & N. W. Ry. Co.*, L. R. 10 Q. B. 212; 44 L. J. Q. B. 89; *The Stella*, [1900] P. 161; 69 L. J. P. 70.

Chap.  
XXVIII.  
Art. 202.

As to what notice of special conditions is necessary to bind a passenger, see Art. 273, *ante*, p. 489.

In *Hall v. N. E. Ry. Co.*, L. R. 10 Q. B. 437, the plaintiff was travelling with a free pass issued by the N. B. Ry. Co., subject to a condition that he should travel "at his own risk," and it was held that the ticket under which the plaintiff travelled meant that he should be at his own risk during the whole of the journey, and operated to protect the defendants as well as the issuing company.

Cf. also *Duff v. G. N. Ry. Co.*, 4 L. R. Ir. C. L. 178.

So, too, in *Gallin's Case*, *ante*, a cattle-drover so travelling, who had to alight at a siding, and in necessarily going to the station passed a dangerous place, at which he met with an accident, was held not entitled to recover, although the jury found that there had been negligence on the defendant company's part.

A free pass, obtained by an official of another railway company for himself and wife from the L. & S. W. Ry. Co. for the journey from London to Jersey, referred, on the face of it, to the following condition printed on the back: "That it shall be taken as evidence of an agreement that the company are relieved from all responsibility for any injury, delay, loss, or damage, however caused, that may be sustained by the person or persons using this pass."

Through the negligence of the servants of the railway company, and during the transit from Southampton to the Channel Islands, the steamer on which the official was travelling stranded, and he was drowned.

The widow, on behalf of herself and infant children, claimed, against the fund paid by the railway company into Court in a

Chap.  
XXVIII.  
Art. 202.

limitation suit, for the loss of her husband and father of the children. It was held, by Gorell Barnes, J., affirming the decision of the registrar, that, in respect of the loss of life—as the widow and children could only claim under Lord Campbell's Act, where, if death had not ensued, the party injured would have been entitled to maintain an action for damages—the conditions on which the free pass was granted, and which the deceased must, from his official position, be taken to have known, included the sea passage as well as the land transit and barred the claim. *The Stella*, [1900] P. 161; 69 L. J. P. 70.

A passenger took a ticket containing a printed condition which stated that, inasmuch as the holder was permitted to travel (as he did) by a passenger carriage attached to a goods train, the railway company should be relieved from responsibility for any personal injury to plaintiff, consequent upon, or in any way arising from, such passenger carriage being attached to a goods train. In an action by the passenger for personal injuries sustained by him while alighting from a carriage attached to a goods train, which, after certain goods wagons had been shunted, stopped short of the platform of the station to which he was travelling, the Court held that the plaintiff was bound by the condition, although, in fact, unaware of its terms, and that the railway company were exempted from liability if the injuries complained of arose from an accident within the scope of the condition. *Johnson v. Great Southern & Western Ry. Co.*, 9 Ir. R. C. L. 108.

A passenger who had received a ticket from a railway company with the words "at passenger's own risk" on its face and conditions on the back was injured owing to the negligence of the company's servants. The County Court judge found that the passenger had not observed or read any notice upon the ticket, and that no reasonably sufficient notice of the conditions had been given to him. It was held that there was evidence to support those findings, and that the plaintiff was entitled to judgment. *Hooper v. Furness Ry. Co.*, 23 T. L. R. 451.

293. Unless there be an intention in the passenger to defraud, the mere non-payment of fare will not exempt the railway company from liability for negligence. *Austin v. G. W. Ry. Co.*, L. R. 2 Q. B. 442; 36 L. J. Q. B. 201.

Chap.  
XXVII  
Art. —

By 7 & 8 Vict. c. 85, s. 6 (now repealed save as to Ireland by sect. 10 of the Cheap Trains Act, 1883), railway companies were bound to carry by certain trains children under three years of age without charge, and were entitled to half the fare charged for an adult in respect of all children between three and twelve years of age. The plaintiff's mother, carrying in her arms the plaintiff, a child of three years and two months old, took a ticket for herself by one of these trains on the defendants' railway, but did not take a ticket for the plaintiff; in the course of the journey an accident occurred through the negligence of the defendants, and the plaintiff was injured. At the time the plaintiff's mother took her ticket, no question was asked by the defendants' servants as to the age of the child; and there was no intention on the part of the mother to defraud the company. It was held that the plaintiff was entitled to recover against the defendants for the injury he had received. *Austin v. G. W. Ry. Co.*, *supra*.

Cockburn, C. J., Shee, J., and Lush, J., held that there was a contract to carry both mother and child, and that the mistake as to the age of the child was no answer to an action for breach of this contract. And Blackburn, J., held that, apart from any contract, the company were liable for breach of a duty, arising from the fact that the child was lawfully in one of their carriages.

294. A railway company are not liable for injury or loss caused to a trespasser by the negligence of their servants or agents, *Grand Trunk Railway Co. of Canada v. Barnett*, [1911] A. C. 361; 80 L. J. P. C. 117, unless they knew that persons were in the habit

Chap.  
XXVIII.  
Art. 204.

of trespassing in the manner of the plaintiff and took no steps to prevent them. *Cooke v. Midland Great Western Railway of Ireland*, [1909] A. C. 229; 78 L. J. P. C. 76.

In *Grand Trunk Railway Co. of Canada v. Barnett*, *supra*, a plaintiff, who was a trespasser, took a ride upon a train foot-board, and was injured by the negligence of the servants of the defendants, over whose line the train was running. It was held that they owed him no duty, and could not be made liable for his injuries.

Lord Robson, who delivered the judgment of the Court, said, at [1911] A. C. 369: "The railway company was undoubtedly under a duty to the plaintiff not wilfully to injure him; they were not entitled unnecessarily and knowingly to increase the normal risk by deliberately placing unexpected dangers in his way, but to say that they were liable to a trespasser for the negligence of their servants is to place them under a duty to him of the same character as that which they undertake to those whom they carry for reward.

"The authorities do not justify the imposition of any such obligation in such circumstances. A carrier cannot protect himself against the consequences which may follow on the breach of such an obligation (as, for instance, by a charge to cover insurance against risk), for there can be no contracts with trespassers; nor can he prevent the supposed obligation from arising by keeping the trespasser off his premises, for a trespasser seeks no leave and gives no notice."

A wilful or reckless disregard of ordinary humanity rather than mere absence of reasonable care must be proved to charge a person with liability to a trespasser for injuries received by the trespasser. *Ibid.*

In the case of *Cooke v. Midland Great Western Railway of Ireland*, *supra*, a railway company kept a turntable unlocked (and therefore dangerous for children) on their land close to a public

Chap.  
XXVIII.  
Art. 294.

road. The company's servants knew that children were in the habit of trespassing there and playing with the turntable. The children obtained access to it through a gap in the fence, which was well worn, and which the railway company were under a statutory duty to maintain. In an action by a child who was injured while playing on the turntable, the Court held that, though a trespasser, he could recover.

"The question," said Lord Macnaghten, at p. 234 of the L. R., "for the consideration of the jury may, I think, be stated thus: Would not a private individual of common sense and ordinary intelligence, placed in the position in which the company were placed, and possessing the knowledge which must be attributed to them, have seen that there was a likelihood of some injury happening to children resorting to the place and playing with the turntable, and would he not have thought it his plain duty either to put a stop to the practice altogether, or at least to take ordinary precautions to prevent such an accident as that which occurred?"

Cf. also *Lowery v. Walker*, [1911] A. C. 10.

The leave and licence to trespass, which may be said to be implied by reason of the neglect to take steps to prevent its recurrence, will be deemed only to apply to such trespass as is proved to be within the knowledge of the railway company.

Thus, where it is shown that children were in the habit, to the knowledge of the company's servants, of playing upon a pile of sleepers on the company's premises, the company will not be held liable for injury to a child who trespasses beyond those sleepers on to the main line. *Jenkins v. G. W. Ry. Co.*, [1912] 1 K. B. 525; 81 L. J. K. B. 378.

"Persons may not think it worth their while to take ordinary care of their own property, and may not be compellable to do so; but it does not seem unreasonable to hold that, if they allow their property to be open to all comers, infants as well as children of maturer age, and place upon it a machine attractive to children and dangerous as a plaything, they may be responsible in damages

Chap.  
XXVIII.  
Art. 294.

to those who resort to it with their tacit permission, and who are unable, in consequence of their tender age, to take care of themselves." *Per* Lord Macnaghten in *Cooke v. Midland G. W. Ry. of Ireland*, *ante*, [1909] A. C. at p. 236.

Cf. however, *Wilson v. Glasgow & S. W. Ry.*, [1915] S. C. 215.

A person crossing a railway at a place where there is no level crossing is a trespasser, and it is no defence to allege that there was a right of way at the place in question. *Cal. Ry. Co. v. Walmsley*, 9 F. 1047.

**295.** A railway company are liable for loss or injury caused by the negligence of their servants to persons using level crossings over their line. *Smith v. S. E. Ry. Co.*, [1896] 1 Q. B. 178; 65 L. J. Q. B. 219; *Boyd v. G. N. Ry. of Ireland Co.*, [1895] 2 Ir. R. 555; *McDowall v. G. W. Ry. Co.*, [1903] 2 K. B. 331; 72 L. J. K. B. 652. But the plaintiff in such a case must show that he was reasonably led to assume by the conduct of the company that the line was clear. *N. E. Ry. Co. v. Wanless*, L. R. 7 H. L. 12; 43 L. J. Q. B. 185; *Smith v. S. E. Ry. Co.*, *ante*.

A railway line crossed a public footpath on the level, the approaches to the crossing being guarded by hand-gates. A watchman who was employed by the railway company to take charge of the gates and crossing during the day was withdrawn at night. The dead body of a man was found on the line near the level-crossing at night, the man having been killed by a train which carried the usual head-lights, but did not whistle or otherwise give warning of its approach. No evidence was given of the circumstances under which the deceased got on the line.

An action on the ground of negligence having been brought

by the administratrix of the deceased, the jury found a verdict for the plaintiff.

Chap.  
XXVIII.  
Art. 295.

It was held by the House of Lords, affirming the decision of the Court of Appeal, that even assuming (but without deciding) that there was evidence of negligence on the part of the company, yet there was no evidence to connect such negligence with the accident: that therefore there was no case to go to the jury, and that the railway company were not liable. *Wakelin v. L. & S. W. Ry. Co.*, 12 A. C. 41; 56 L. J. Q. B. 229. The judgments delivered by the Court of Appeal in this case will be found in [1896] 1 Q. B. at pp. 189 *et seq.*

Cf. also *Hendrie v. Caledonian Ry. Co.*, 11 F. 776; 46 Scots. L. R. 601.

Where a railway company erected a footbridge as an alternative to a level crossing, and the plaintiff on her way to catch a train slipped on some frozen snow and was injured, it was held that the bridge having been dedicated to and accepted by the public, the public must take it as they found it, and in the absence of evidence of a concealed danger or a breach of duty by the railway company, the plaintiff could not recover. *Brackley v. Mid. Ry. Co.*, 85 L. J. K. B. 1596.

In *Smith v. S. E. Ry. Co.*, [1896] 1 Q. B. 178; 65 L. J. Q. B. 219, the plaintiff's husband had crossed a level-crossing over the defendants' line, in order to reach the house of a gate-keeper in the defendants' service. After speaking to the gatekeeper, he attempted to recross the line at the same place, and was knocked down by a passing train.

There was evidence that it was the duty of the gatekeeper, whenever a train was about to pass over the level-crossing, to come out and exhibit a signal for the guidance of the engine-driver, and also that the gatekeeper habitually did so, although sometimes he did not do so. On the occasion in question the gatekeeper had remained in his house.

The Court of Appeal held that there was evidence from which a jury might infer that the deceased knew that the gatekeeper



Chap.  
XXVIII.  
Art. 295.

had to perform the above-mentioned duty, and that therefore they might take the view that it was not a want of reasonable care on the part of the deceased to presume that, as the gatekeeper remained in his house, no train was approaching, and therefore he might go over the crossing in safety without taking the precaution of looking up and down the line, or any other such precaution as might otherwise be necessary. See also *Curtin v. G. S. & W. Ry. Co.*, 22 L. R. Ir. 210.

*Contra*, where men were knocked down by a train and injured while trespassing upon a railway in order to reach an alleged public road at a time when the gates at an adjacent level-crossing were shut, showing that a train was expected, it was held that they were guilty of contributory negligence, and a verdict in their favour was set aside. *Mitchell v. Caledonian Ry. Co.*, [1910] S. C. 546; 47 Sc. L. R. 456.

In Ireland it has been held that a railway company was liable in a case where a medical man, whose time was valuable, had been detained for twenty minutes at a level-crossing, owing to the unreasonable and negligent delay of the company's servants in opening the gates. *Boyd v. G. N. Ry. of Ireland Co.*, [1895] 2 Ir. R. 555.

Where a horse was injured while passing over a level-crossing, owing to a wooden wedge, which formed part of the track, having been displaced, and it was shown that the line was inspected twice a day for the purpose of seeing that such wedges were in a proper position, the Court of Session in Scotland held that the railway company, having taken all reasonable precautions, were not liable for the injury to such horse. *Bell v. Caledonian Ry. Co.*, 4 F. 431.

Certain vehicles were placed by a servant of a railway company in a position which, while safe in itself, was such that if the breaks were unscrewed, they would run down a gradient across a level-crossing. If the vehicles had been taken to another point, they would, when set in motion, have been diverted by a catch point. The company's officials knew that boys were in the habit

Chap.  
XXVII.  
Art. 206.

of trespassing at the place where the vehicles were left and meddling with them. Some boys in fact did unscrew the breaks of the vehicles, with the result that they ran across the level-crossing and injured the plaintiff; the Court of Appeal (reversing Kennedy, J.) held that the company were not liable for the damage sustained by the plaintiff. *McDowall v. G. W. Ry. Co.*, [1903] 2 K. B. 331; 72 L. J. K. B. 652.

With respect to the speed at which trains should be driven while crossing roads at points adjoining stations, the following case may be referred to:—The railway company were, by their special Act, which incorporated the Railways Clauses Consolidation Act, 1845, empowered to carry their railway across a turnpike road on the level at a point adjoining a station. Sect. 48 of the above Clauses Act enacts that “Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour.”

The company nevertheless had for a long time driven their trains over the crossing at a speed exceeding four miles an hour. On an information filed by the Attorney-General to restrain them from so doing, the company contended that there was no proof of any injury occasioned to the public by their contravention of the above section, and that the inconvenience caused to the public by reason of the existence of the crossing would be increased if they complied with it. The Court of Appeal, affirming Bruce, J., held that it was not necessary to show that there was in fact any damage occasioned to the public by the breach of the statutory obligation, and that the Court could not entertain the question whether injury to the public was in fact so occasioned, but were bound to grant the injunction asked for. *Att.-Gen. v. L. & N. W. Ry. Co.*, [1899] 1 Q. B. 72; [1900] 1 Q. B. 78; 69 L. J. Q. B. 26.

Where a woman was killed while attempting to cross a railway by crawling under some trucks which had been moved on while

Chap.  
XXVIII.  
Art. 295.

she was underneath them at a spot where she had a licence to cross the line by a private path, it was held that the licence did not include a licence to cross the line when trucks were on it, and that there being no evidence of negligence on the part of the defendants, they were not liable. *French v. Hills Plymouth Co.*, 24 T. L. R. 644.

A man while crossing diagonally a double line of rails in a dockyard was knocked down by a train approaching from behind on the nearer set of rails. Another train was at the same time passing along the further set of rails. It appeared from the evidence that he was in such a position that had he looked he must have seen the train by which he was knocked down. The defenders pleaded contributory negligence. A verdict was found for the pursuers, but was set aside on appeal, and a new trial ordered. *Mitchell v. Caledonian Ry. Co.*, 11 F. 746; 46 Scots. L. R. 517.

The user of a level-crossing, made under the Railways Clauses Consolidation Act, 1845, s. 68, is not necessarily restricted to the purposes for which it was originally used, but, on the other hand, it must not be used so as to increase substantially the burden of the easement by enlarging its character. Whether the change of user does so is a question of fact. *Taff Vale Ry. Co. v. Gordon Canning*, [1909] 2 Ch. 48; 78 L. J. Ch. 492.

The duty imposed on a railway company by the Railways Clauses Act, 1845, s. 61, *i.e.*, to erect good and sufficient gates at a level-crossing where there is a footway, is one which is owed to all the world, and not only to persons lawfully using the footpath. *Parkinson v. Garstang and Knott End Ry. Co.*, [1910] 1 K. B. 615; 79 L. J. K. B. 380.

As to insufficient steps taken to protect persons crossing a level-crossing, *vide Jenner v. S. E. Ry. Co.*, 105 L. T. 131; 27 T. L. R. 445; *Grand Trunk Ry. of Canada v. McAlpine*, [1913] A. C. 838; 83 L. J. P. C. 44.

Where in a dock a railway company had three lines of rails connecting the quays with the main railway system, and they

crossed the road leading into the dock at a point just inside the dock gate, it was held that a seaman who was injured while attempting to pass between two wagons which were standing on the crossing had no cause of action, there being no duty on the railway company either to shut the gate or give warning before beginning to shunt the wagons. *Clark v. N. B. Ry. Co.*, [1912] S. C. 1.

Where it is the practice of a railway company to keep a gate at a level-crossing locked when trains are passing, and unlocked only when it is safe to cross the line, a person relying upon that practice may recover damages for injury suffered when crossing the level-crossing if the gate is negligently left unlocked by the railway servants and the plaintiff is knocked down by a passing train. *Mercer v. S. E. & C. Ry. Co.*, [1922] 2 K. B. 549; 92 L. J. K. B. 25.

The railway by leaving the gate unlocked gave to the plaintiff an invitation to cross the line, and in the circumstances the plaintiff could not be said to have failed to use ordinary care. *Ibid.*

**296.** The duty of a railway company towards those whom, in practice, they allow to accompany passengers in order to see them off by the train without asking special permission, is not lower than towards those whom they accompany. *Per* Denman, J., in *Watkins v. G. W. Ry. Co.*, 46 L. J. C. P. 817, at p. 820.

A railway company are liable for negligence to persons not intending to travel who come to their stations on business. *Holmes v. N. E. Ry. Co.*, 24 L. T. 69; *Norman v. G. W. Ry. Co.*, [1915] 1 K. B. 584; 84 L. J. K. B. 598.

Denman, J., in *Watkins' Case*, said, at p. 820: "I am of opinion that a railway company, keeping open a bridge over their line for the use of their passengers, is bound to keep that bridge

Chap.  
XXVIII.  
Art. 296.

reasonably safe, and that if, in practice, the friends of passengers are allowed by the company's servants to see passengers off by the trains, and to cross the bridge without asking special permission, the duty of the company in that respect cannot be put lower towards them than towards those whom they accompany for such not unreasonable purpose. I think that this view is consistent with the cases of *Corby v. Hill*, 4 C. B. (N. S.) 556; 27 L. J. C. P. 318; and *Smith v. London, &c. Docks Co.*, L. R. 3 C. P. 330; 37 L. J. C. P. 217. I regard the passenger's friend so permitted to go along the bridge by constant acquiescence on the part of the railway as not being in the nature of a person barely licensed to be *there*, but as being invited to go to the same extent as the passenger whom he accompanies, and who is there on lawful business, in which the passenger and the company have both an interest. I consider also that the case of *Indermaur v. Dames*, L. R. 2 C. P. 311; 36 L. J. C. P. 181, is in favour of this view."

Thus the company is liable if a person seeing off someone by train is injured by a door which has not been closed through the fault of the station employees. *Tough v. N. B. Ry. Co.*, [1914] S. C. 291.

297. A railway company are not liable, save as hereafter mentioned, for any accident or damage resulting from the exercise of their statutory powers, unless there be proof of negligence on their part. See *Hammersmith and City Ry. Co. v. Brand*, L. R. 4 H. L. 171; *Geddis v. Proprietors of Bann Reservoir*, 3 App. Cas. 430.

An exception to this rule has been created by the Railway Fires Act, 1905 (5 Edw. 7, c. 11), s. 1, which enacts that when damage is caused to agricultural land or to agricultural crops, as defined by the Act, by fire arising from sparks or cinders emitted from any locomotive engine used on a railway, the fact that the engine

was used under statutory powers shall not affect liability in an action for such damage.

THE  
RAILWAY  
ACT, 1907.

Where such damage is caused through the use of an engine by one company on a railway worked by another company, either company is liable, but if the action is brought against the company working the railway, that company is entitled to be indemnified in respect of their liability by the company by whom the engine was used.

The Act also enables a railway company to enter upon land for the purpose of extinguishing fires caused by sparks, and to cut and clear away undergrowth in order to diminish the risk of fire. Compensation is to be paid to any person injuriously affected by the exercise of these powers. Sect. 2.

No action can be brought under sect. 1 of the Act unless the damages claimed do not exceed 100*l.*, and the notice of claim must be sent in within seven days. Sects. 1 (3) and 3.

The Act came into operation on 1st January, 1908.

The particulars of damages which are required to be sent to a railway company under sect. 3 of this Act upon a claim being made in respect of a fire caused by sparks from an engine, must contain a statement of the amount claimed in money. *Martin v. G. E. Ry. Co.*, [1912] 2 K. B. 406.

The fact that the actual damage caused to the land by the fire exceeds 100*l.* does not prevent the owner of land from maintaining an action under the Act in which the claim for damages is limited to that amount. *Att.-Gen. v. G. W. Ry. Co.*, [1924] 2 K. B. 1. The fact that the claimant in his notice of claim states that the damage amounts to a sum over 100*l.* does not prevent him from subsequently bringing an action under the Act in which the damages are limited as above. *Ibid.*

The result of this Act is to alter the law as established by *Vaughan v. Taff Vale Ry. Co.*, 29 L. J. Ex. 247; and *Canadian Pacific Ry. Co. v. Roy*, [1902] A. C. 220; 71 L. J. P. C. 51, so far as regards damage caused to agricultural land or crops by fire arising from sparks or cinders emitted by locomotives. In

Chap.  
XXVIII.  
Art. 597.

such cases, where the claim does not exceed 100*l.*, the railway company will be liable as at common law. Cf. as to common law liability, *Jones v. Festiniog Ry. Co.*, L. R. 3 Q. B. 733.

Where a locomotive is properly constructed and is supplied with good steam coal, there is no obligation upon a railway company to supply Welsh or other smokeless coal under the Railways Clauses Act, 1845, s. 14, as amended by the Regulation of Railways Act, 1868, s. 19. *L. C. C. v. G. E. Ry. Co.*, [1906] 2 K. B. 312; 75 L. J. K. B. 490.

**298.** A municipal corporation who construct and work a light railway in pursuance of powers conferred upon them by an Order made under the Light Railways Act, 1896, are entitled to the protection given by the Public Authorities Protection Act, 1893, in respect of any action brought against them by a passenger on such light railway for damages caused by any alleged negligence on their part, and therefore any such action must be brought within six months from the happening of the alleged injury. *Lyles v. Southend-on-Sea Corporation*, [1905] 2 K. B. 1; 74 L. J. K. B. 484.

The same principle had been applied by Channell, J., to the case of tramways owned and worked by a county council in *Parker v. London County Council*, [1904] 2 K. B. 501; 73 L. J. K. B. 561.

## II.—EVIDENCE OF NEGLIGENCE.

**299.** The burden of proof is upon the person alleging negligence, since a carrier of passengers is not

an insurer. See *Bird v. G. N. Ry. Co.*, 28 L. J. Ex. 3. See *post*, p. 573.

Chap.  
XXVIII.  
Art. 299.

A collision between two trains of the same company is *primâ facie* evidence of negligence. *Skinner v. L. B. & S. C. Ry. Co.*, 5 Ex. 787.

Running off the line or the breaking down of a carriage are *primâ facie* evidence of negligence. *Dawson v. M. S. & L. Ry. Co.*, 5 L. T. N. S. 682.

Where a passenger was injured by the shock caused by the sudden stopping of a train, which was necessary owing to a man having got upon the line by means of an access under the control of the railway company, the Court of Appeal held that the violent stopping of the train established a *primâ facie* case of negligence on the part of the company, which could only be rebutted by showing (1) that they had acted reasonably and properly in so stopping the train, and (2) that the cause which had led to the necessity of stopping the train was not brought about by negligence on their part. *Angus v. L. T. & S. Ry. Co.*, 22 T. L. R. 222.

In the absence of evidence to the contrary, trains running over a particular line of railway are to be presumed to be the property of, or at any rate under the control of, the company to whom the line belongs, although other companies may have running powers over the part of the line in question. *Ayles v. S. E. Ry. Co.*, L. R. 3 Ex. 146; 37 L. J. Ex. 104.

Evidence that the train started more suddenly than usual and with a jerk, causing the plaintiff to be thrown off his balance and injured, is *primâ facie* evidence of negligence by the railway company. *Met. Ry. Co. v. Delancy*, 90 L. J. K. B. 721; 37 T. L. R. 520.

Injury to a passenger caused by other passengers crowding out of a train before it has stopped at a station is not caused by the negligence of the railway company, even though they may have



Chap.  
XXVIII.  
Art. 300.

negligently allowed the train to be overcrowded, for there is no causal connection between the overcrowding and the accident. *Machen v. L. & Y. Ry. Co.*, 88 L. J. K. B. 371.

300. In all actions against railway companies for personal injuries, if any evidence whatever of negligence is offered, the question whether there was negligence on the part of the company or not is for the jury, and not for the Court. *Bridges v. North London Ry. Co.*, L. R. 7 H. L. 213; 43 L. J. Q. B. 151; *Robson v. N. E. Ry. Co.*, 2 Q. B. D. 85; 46 L. J. Q. B. 50.

Where there is contradictory evidence as to facts, the jury and not the judge must decide upon them. *Dublin, &c. Ry. Co. v. Slattery*, 3 App. Cas. 1155.

But the hurt suffered by the plaintiff must be the proximate consequence of any proved negligence on the part of the railway company.

If the facts as to which evidence is given are such that from them a farther inference of fact may legitimately be drawn, it is for the jury to say whether that inference is to be drawn or not. But it is for the judge to determine as a matter of law whether that farther inference may legitimately be drawn. *Met. Ry. Co. v. Jackson*, 3 App. Cas. 193; 47 L. J. C. P. 303; see also judgment of Kelly, C. B., in *Gee v. Met. Ry. Co.*, L. R. 8 Q. B. 161, at p. 169.

Lord Cairns, L. C., in *Met. Ry. Co. v. Jackson*, *supra*, said, at p. 197 of the L. R.: "The judge has to say whether any facts have been established by evidence from which negligence may be reasonably inferred; the jurors have to say whether from those facts, when submitted to them, negligence *ought to be* inferred."

Chap.  
XXVIII.  
Art. 111

When a passenger is seated in a railway carriage, the fact that his finger is crushed owing to the shutting of the carriage door by a railway servant on the platform is not evidence of negligence in an action against the railway company. There is no duty cast upon the servants of a railway company to give warning of the shutting of a carriage door to passengers who are actually seated inside the carriage and are not in the act of getting in or out of it. *Drury v. N. E. Ry. Co.*, [1901] 2 K. B. 322; 70 L. J. K. B. 830.

Where a boy put his hand in the doorway of a railway compartment while the train in which he was a passenger was standing at a station, the door being then open to allow some other persons to enter the carriage, and the door was slammed by a porter without any warning as the train was moving out of the station, with the result that the boy's hand was hurt, it was held by a Divisional Court that there was no evidence of negligence on the part of the company, as the porter had not been negligent in not first looking to see that no one had placed his hand in the doorway. *Benson v. Furness Ry. Co.*, 88 L. T. 268.

Bags of sugar, while being conveyed by the railway company, were contaminated by leakage from a box containing a solution of arsenic marked "weed killer." Certain persons ate the sugar and were poisoned and died. In an action brought by their relatives against the company the Court of Session in Scotland decided in favour of the company, holding (1) that the primary responsibility lay upon the consignors (who had already paid a sum of money to the pursuers in settlement) of the box, who had not warned the company of the extremely poisonous nature of its contents; (2) that it was proved that the company had no reason to suspect the danger; (3) that no such negligence as would make the company liable could be inferred from the fact that their servants had placed the box, which they knew to be leaking, near the sugar. *Cramb v. Caledonian Ry. Co.*, 19 Sess. Ca. (4th Ser.) 1054.

In a case where a passenger who had put her head out of the carriage window was injured by, and afterwards died from, the

Chap.  
XXVIII.  
Art. 300.

effect of a blow sustained by reason of her head hitting a mail-bag hanging from an apparatus supplied and erected at the side of the railway by the Postmaster-General, the Courts in Scotland held that such an apparatus, not being one from which danger was to be anticipated, was a reasonable facility to which the company was bound to consent in view of their statutory obligation to give reasonable facilities for the delivery of mails, and that they therefore were not liable for the injury thereby caused. *Pirie v. Caledonian Ry. Co.*, 17 Sess. Ca. (4th Ser.) 1157.

In Scotland, also, where a passenger claimed damages against a railway company for injuries alleged to have been sustained by reason of a train in which she was travelling being snowed up, it was held that no cause of action had been shown. *Mathieson v. Caledonian Ry. Co.*, 5 F. 511.

So, too, where the proximate cause of injury is the act of others for whom the railway company are not responsible. *M'Callum v. N. B. Ry. Co.*, [1908] 10 F. 415; 45 Scots. L. R. 305. See also *McDowall v. G. W. Ry. Co.*, [1903] 2 K. B. 331; 72 L. J. K. B. 652.

**301.** The plaintiff in an action for negligence cannot succeed if it is found by the jury that he has himself been guilty of any negligence or want of ordinary care which was the proximate cause of the injury which he suffered.

Though a plaintiff may have been guilty of negligence, and although that negligence may in fact have contributed to the accident which is the subject of the action, yet, if the defendants could, in the result, by the exercise of ordinary care and diligence, have avoided the mischief which happened, the plaintiff's negligence will not excuse them. *Radley v. L. & N. W. Ry. Co.*, 1 App. Cas. 754; 46 L. J. Ex. 573, and the authorities there cited.

If a passenger does something which is obviously both unnecessary and dangerous for the purpose of remedying an inconvenience caused by the negligence of the railway company on whose line he is travelling, he is guilty of contributory negligence, and if his act was the proximate cause of the injury which he suffered it will prevent him from recovering damages in respect of such injury. *Adams v. L. & Y. Ry. Co.*, L. R. 4 C. P. 739; and see the judgments of Keating and Brett, JJ., in *Gee v. Met. Ry. Co.*, L. R. 8 Q. B. 161, at pp. 172 and 174 respectively. But if the inconvenience is so great that it is reasonable to get rid of it by an act not obviously dangerous and executed without carelessness, the railway company causing the inconvenience by their negligence will be liable for any injury that might result from an attempt to avoid such inconvenience. *Per* Brett, J., in *Adams v. L. & Y. Ry. Co.*, L. R. 4 C. P. 739, at p. 743.

Chap.  
XXVIII.  
Art. 801.

In *Adams v. L. & Y. Ry. Co.*, L. R. 4 C. P. 739, the plaintiff was injured in attempting to close the door of the compartment in which he was travelling. The door had, for the fourth time during the journey, flown open through the railway company's negligence. The plaintiff had managed to shut it on three previous occasions. At the time when he was injured there was room for him to sit away from the door, and the train would have stopped in three minutes. The Court of Common Pleas held that, on the principle stated in the above article, the plaintiff was not entitled to recover damages against the railway company. In the later case of *Gee v. Met. Ry. Co.*, *supra*, the Exchequer Chamber, while approving of the principle on which *Adams' Case* had been decided, doubted whether it had been correctly applied to the facts of that case.

Chap.  
XXVIII.  
Art. 301.

In *Gee's Case* the plaintiff had got up and put his hand on the bar passing across the window of the compartment in order to see the lights of the next station; the pressure caused the door to open, and he fell out and was hurt. There was no evidence as to the construction of the door and fastenings.

Some of the judges in the Exchequer Chamber thought that no case of contributory negligence arose at all, while those of the judges who thought otherwise held that, the door having opened on a slight pressure, there was evidence upon which the jury might find that there had been negligence on the part of the company's servants, and that this was the cause of the accident; and further, that no act of the plaintiff had been proved which was so clearly contributory to the accident that it would have been unreasonable for the jury to find otherwise. See the judgment of Brett, J., in this case, at p. 174 of the report.

When, in an action of negligence, the defendants rely on the doctrine *Volenti non fit injuria*, they must establish that the plaintiff voluntarily took the risk upon himself, and had a full knowledge of the nature and extent of it when he did so. *Osborne v. L. & N. W. Ry. Co.*, 21 Q. B. D. 220; 36 W. R. 809.

**302.** An invitation to passengers to alight on the stopping of the train, without any warning of danger to the passenger, who is so circumstanced as to be unable to alight without danger, such danger not being visible and apparent, amounts to negligence on the part of the railway company; and the bringing up a train to a final standstill for the purpose of the passengers alighting amounts to an invitation to alight; at all events, after such a time has elapsed that the passenger may reasonably infer that it is intended that he should get out if he purposes to alight at the particular station. *Cockle v. S. E. Ry. Co.*, L. R. 7 C. P. 321; 41 L. J. C. P. 140.

But if, seeing the danger of alighting where there is no platform, or, in spite of warning, a passenger chooses to alight, the company is not responsible if he is injured. *Lewis v. L. C. & D. Ry. Co.*, L. R. 9 Q. B. 66; 43 L. J. Q. B. 8; *Owen v. G. W. Ry. Co.*, 46 L. J. Q. B. 486.

CHAP.  
XXVIII.  
Art. 500

In *Bridges v. North London Ry. Co.*, L. R. 7 H. L. 213; 43 L. J. Q. B. 151, it was doubted whether the calling out the name of a station is an invitation to the passengers going to that station to alight there. It was held that the evidence of the calling out the name in that case, coupled with the stopping of the train and the interval of time which elapsed before it again moved, was evidence to go to a jury; but in the case of *Lewis v. L. C. & D. Ry. Co.*, L. R. 9 Q. B. 66; 43 L. J. Q. B. 8, it was held that the mere stopping of a train, and calling out the name of a station, is no evidence of an invitation to alight.

In delivering judgment in *Cockle's Case*, Cockburn, C. J., said, at pp. 326 and 327 of the L. R.: "It is not necessary here to say what would be the effect if a passenger should alight where the danger was visible and apparent, as where a passenger gets out in broad day, trusting to his ability to overcome the difficulty. . . . In the present case the evidence of the conduct of the company's servants was such as to warrant the jury in finding that the train had really come to the final standstill, and that the company's servants meant the passengers to get out there or be carried on."

In *Robson v. N. E. Ry. Co.*, 2 Q. B. D. 85; 46 L. J. Q. B. 50, it was held that there was evidence of negligence where a carriage in which the plaintiff was travelling had drawn up beyond the platform, and she having opened the door waited for assistance on the steps, and then tried to alight thinking that the train was about to proceed, and thereby injured herself.

A railway train, consisting of six carriages, drew up at a small station with the last carriage beyond the platform. The platform

Chap.  
XXVIII.  
Art. 308

was adapted for five carriages only, but on market days the train usually consisted of six carriages. The plaintiff, who frequently travelled by the train, was in the last carriage. The train was drawn up as far as possible, the engine being against a dead end, and the porters called out, "All change here." The plaintiff's son got out and took her parcels across to a train waiting on the other side of the platform. The plaintiff knew her carriage was not at the platform. She, however, did not call for assistance, but proceeded to get out as quickly as she could. She put one foot on the iron step, and as she was about to put the other on the wooden step the first slipped, and she fell. It was held that the above circumstances did not constitute any evidence of negligence for the jury. *Owen v. G. W. Ry. Co.*, 46 L. J. Q. B. 486.

The train in which the plaintiff was carried as a passenger over-shot the platform at the station at which the plaintiff intended to alight, drawing the carriage in which the plaintiff was seated beyond the platform. The porters called out, "Keep your seats," but not so as to be heard by the plaintiff, and the train was not put back. After waiting a reasonable time, the plaintiff got out, and in doing so sustained personal injuries. It was held that there was evidence of negligence on the part of the company to go to the jury. *Rose v. N. E. Ry. Co.*, 2 Ex. D. 248; 46 L. J. Ex. 374.

See also the Scottish case, *Aitken v. N. B. Ry. Co.*, 18 Sess. Ca. 4th Series, 836.

On the other hand, when upon a foggy evening the train over-shot the platform by over 100 yards, and the engine driver upon discovering his mistake blew the whistle and sent the fireman to prevent the passengers from leaving the carriages, but in the meantime one passenger stepped from a carriage and was injured, the Court held that there was no evidence of negligence against the railway company. *Anthony v. Mid. Ry. Co.*, 100 L. T. 117; 25 T. L. R. 98. Cf. also *Taylor v. G. S. & W. Ry. Co.*, [1909] 2 Ir. R. 230; and *Abbott v. N. B. Ry. Co.*, [1916] Sess. Ca. 306.

**303.** A railway company are bound to provide for the public whom they invite to travel by their line means of access to, and egress from, their carriages and stations, which can be used without danger. *Bridges v. N. L. Ry. Co.*, L. R. 7 H. L. 213; 43 L. J. Q. B. 151; *Atherton v. L. & N. W. Ry. Co.*, 93 L. T. 464.

Chap.  
XXVIII.  
Art. 908.

Their duty is to take reasonable care to keep their premises in such a state that those whom they invite to come there shall not be unduly exposed to danger; but it is not sufficient merely to prove that an accident has occurred in order to fix them with liability. *Welfare v. L. & B. Ry. Co.*, L. R. 4 Q. B. 693; 38 L. J. Q. B. 241.

In cases as to accidents to passengers at stations, it is always a question whether the mischief could reasonably have been foreseen, and whether precautions ought not to have been taken to guard against it.

In *Crafter v. Met. Ry. Co.*, L. R. 1 C. P. 300; 35 L. J. C. P. 132, the railway company had a staircase at a station for the use of passengers, leading from the arrival platform to the street: it was about 6 feet wide, with walls on each side and wooden steps nosed with brass, worn smooth. The plaintiff slipped in going up the stairs and hurt himself. It was held that there was no evidence to go to the jury, there being nothing unusual in the staircase, and its nature being obvious to everyone.

On the other hand, the plaintiff was injured by falling on steps leading to the defendants' railway station, which the defendants had allowed to be slippery and dangerous. There was no contributory negligence on the part of the plaintiff, but there were other steps which he might have used, and he admitted that he knew that the steps were dangerous, and went down carefully holding the handrail. The Court held that the defendants had



Chap.  
XXVIII.  
Art. 200.

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not shown that the plaintiff, with a full knowledge of the nature and extent of the danger, had voluntarily agreed to incur it, so as to make the maxim *Volenti non fit injuria* applicable, and therefore he was entitled to recover. *Osborne v. L. & N. W. Ry. Co.*, 21 Q. B. D. 220.

In *Cornman v. Eastern Counties Ry. Co.*, 29 L. J. Ex. 94, the plaintiff, who, with a crowd of others, was waiting on the platform for the arrival of a train, caught his foot on the edge of a weighing machine, was tripped over, and hurt. The machine was such as is commonly employed for weighing luggage, and was standing in the usual place. It was held that there was no evidence of negligence of the company to go to the jury.

Where, however, a passenger, while walking along a platform with a crowd of other persons, tripped over a box containing signal-levers, which projected some two inches above the level of the platform, and was thereby injured, the Court of Appeal held that there was evidence of negligence on the part of the company to support a verdict for the plaintiff. *Sturges v. G. W. Ry. Co.*, 56 J. P. 278.

In an action under Lord Campbell's Act to recover damages for death through the alleged negligence of a railway company, it appeared that on the occasion of the accident the deceased had taken a ticket for a special train at a cheap rate for harvest men. There being no room in the special train, the deceased remained on the platform until the arrival of the next ordinary train, together with a crowd composed of harvest men, who had also taken tickets for the special train, and of other persons, a large number of whom had entered the station without permission. The company had an extra number of porters at the station, but in consequence of the great disorderliness of the persons so assembled on the platform, and by a sudden and violent rush of the crowd, the deceased was pushed on the line, and was killed by the engine of the ordinary train as it approached. At the trial the jury found that the deceased was not entitled to proceed by the ordinary train; that the accident was caused by the rush of the crowd; that the company had not taken due precautions to prevent injuries

Chap.  
XXVIII.  
Art. 898.

from the crowding on the platform; and that, by using due precautions, they might have prevented the rush of the crowd:— The Court held, that even assuming the deceased to have been lawfully on the platform, the company were not liable for the accident. *Cannon v. Midland Great Western Ry. Co.*, 6 L. R. Ir. 199. A railway company is not bound to provide at a station (even when an unusually large number of passengers by a special train is expected) a staff of servants sufficient, not merely for the guidance and assistance of passengers and the preservation of order amongst them, but adequate to control the violence of an assemblage of persons entering the station without permission and overcrowding the platform. *Ibid.*

In *Shepherd v. Midland Ry. Co.*, 25 L. T. 879; 20 W. R. 705, an intending passenger fell upon a piece of ice nearly an inch thick, extending half-way across the platform. The presence of the ice being unexplained, it was held that there was evidence of negligence on the part of the company.

In *Atherton v. L. & N. W. Ry. Co.*, 93 L. T. 464; 21 T. L. R. 671, the plaintiff, a passenger, while leaving the station by a path belonging to the defendants, which ran alongside the railway and was an authorized means of exit, was injured by a spark from an engine on the line. There was evidence to show that the defendants' attention had been drawn to the danger arising from sparks, and that they had declined to protect the path by a screen, which could have been done at a reasonable cost. The engine was properly constructed. The Court of Appeal held that there was evidence upon which a jury could find that the defendants had been negligent.

Although a railway company are not bound to erect a foot bridge over their line to give passengers access from one platform to the other, and the want of such a bridge will not, *per se*, make them liable for injuries received by the public on that account, still the absence of such a precaution throws a greater onus on the company to provide for the safety of the public. *Girdwood v. North British Ry. Co.*, 4 Sess. Ca. (4th Series) 115.

Chap.  
XXVIII.  
Art. 808.

Where notices have been put up by a railway company forbidding persons to cross the line at a particular point, but these notices have been continually disregarded by the public, and the company's servants have not interfered to enforce their observance, the company cannot, in the case of an injury occurring to anyone crossing the line at that point, set up the existence of the notices by way of answer to an action for damages for such injury. *Dublin, Wicklow & Wexford Ry. Co. v. Slattery*, 3 App. Cas. 1155.

*Bilbee v. L. B. & S. C. Ry. Co.*, 34 L. J. C. P. 182; 18 C. B. N. S. 584, shows that there may be a state of circumstances which would cast on a railway company the duty of doing something more than their statutory obligations require.

In the case of *Fraser v. Caledonian Ry. Co.*, 5 F. 41, the Court of Session in Scotland held that an action would lie against a railway company for injuries sustained through their alleged negligence in permitting a greater number of persons to assemble in a station than the platforms could accommodate and in not providing a sufficient staff to control the crowd.

In such a case it is a question of fact for the jury whether there has been negligence on the part of the railway company. See *Hogan v. S. E. Ry. Co.*, 28 L. T. 271.

The Scottish Courts have also held that a railway company are not guilty of negligence because they do not take steps to see that an intoxicated passenger who arrives by a train at one of their stations leaves the platform in safety. *McCormick v. Caledonian Ry. Co.*, 6 F. 362.

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## III.—COMPENSATION FOR INJURIES.

*Measure of Damages.*

304. In an action against a railway company for personal injury to a passenger, the jury in assessing the damages may take into consideration, besides the pain and suffering of the plaintiff, and the expense incurred by him for medical and other necessary attendance, the loss he has sustained through his inability to continue a lucrative professional practice. *Phillips v. L. & S. W. Ry. Co.*, 5 C. P. D. 280; 49 L. J. Q. B. 233.

Chap.  
XXVIII.  
Art. 304.

In arriving at a sum representing damages for a prospective loss of income from professional or other earnings, the chances and accidents of life must be taken into account. A new trial will not be granted on the ground of excessive or insufficient damages, unless the amount awarded be such that no twelve sensible men could reasonably have given it, or unless it be shown from the amount of damages or other circumstances that the jury must have taken into consideration matters which they ought not to have considered, or applied a wrong measure of damages. *Johnston v. G. W. Ry. Co.*, [1904] 2 K. B. 250; 73 L. J. K. B. 568.

They may also award damages for physical injuries resulting from nervous shock, although there has been no actual impact, provided that the shock arises from a reasonable fear of immediate personal injury. *Dulieu v. White*, [1901] 2 K. B. 669; 70 L. J. K. B. 837.

Chap.  
XXVIII,  
Art. 304.

In the case of *Phillips v. L. & S. W. Ry. Co.*, 5 C. P. D. 280, it was held that the right direction to a jury, who have to assess damages in an action for personal injuries sustained in a railway accident by a professional man making a large income, is that, in respect to the plaintiff's money loss, they should not attempt to arrive at an absolute or mathematically accurate compensation, but should give a fair and reasonable compensation, taking into consideration the amount of his income when the injuries were sustained, the length of time he has been deprived of that income, the probability of his having continued to earn it if he had not been injured, the prospect of his being able to earn anything in the future, and all the other circumstances of the case.

Bramwell, L. J., said, at p. 287: "I have tried as a judge more than a hundred actions of this kind, and the direction which I, in common with other judges, have been accustomed to give to the jury has been to the following effect:—'You must give the plaintiff a compensation for his pecuniary loss; you must give him compensation for his pain and bodily suffering. Of course, it is almost impossible for you to give to an injured man what can be strictly called a compensation; but you must take a reasonable view of the case, and must consider under all the circumstances what is a fair amount to be awarded to him.' I have never known a direction in that form to be questioned."

In *Dulieu v. White*, [1901] 2 K. B. 669, a Divisional Court (Kennedy and Phillimore, JJ.) refused to follow the decision of the Judicial Committee of the Privy Council in *Victorian Ry. Commrs. v. Coultas*, 13 A. C. 222; 57 L. J. P. C. 69, in which it had been held that damages claimed in respect of injuries resulting from nervous shock alone without physical impact were too remote.

The Irish Courts had arrived at a similar decision to that of *Dulieu v. White* in the unreported case of *Byrne v. G. S. & W. Ry. Co.* (decided in 1882), and in *Bell v. G. N. Ry. of Ireland*,

26 L. R. Ir. 428. The Court of Session in Scotland also adopted the same view in *Cooper v. Caledonian Ry. Co.*, 4 F. 880.

Chap.  
XXVII.  
Art. 304.

**305.** Where the passenger has, under a policy of insurance against accidents, received a sum of money in respect of the accident in question, it cannot be taken into account in reduction of the damages to be awarded to such passenger. *Bradburn v. G. W. Ry. Co.*, L. R. 10 Ex. 1; 44 L. J. Ex. 9.

The Railway Passengers Assurance Company's Act, 1864 (27 & 28 Vict. c. cxxv), s. 35, enacts, that no contract of that company, nor any compensation received or recoverable by virtue of any such contract, either under that Act or otherwise, shall prejudice or affect any right or action, claim or demand, which any person or his executors or administrators may have against any other company or any person, either at common law or by virtue of 9 & 10 Vict. c. 93, or of any other Act of Parliament, for the injury, whether fatal or otherwise, in respect of which the compensation is received or recoverable.

**306.** Where a person has been injured or killed by an accident on a railway, the Board of Trade (now Ministry of Transport). upon application in writing made jointly by the company from whom compensation is claimed and the person if he is injured. or his representatives if he is killed. may, if they think fit, appoint an arbitrator, who shall determine the compensation (if any) to be paid by the company. Regulation of Railways Act, 1868, s. 25.

**307.** Whenever any person injured by an accident on a railway claims compensation on account of the injury, any judge of the Court in which proceedings

Chap.  
XXVIII.  
Art. 207.

to recover such compensation are taken, or any person who by the consent of the parties or otherwise has power to fix the amount of compensation, may order that the person injured be examined by some duly qualified medical practitioner named in the order, and not being a witness on either side, and may make such order with respect to the costs of such examination as he may think fit. Regulation of Railways Act, 1868, s. 26.

## PART VIII.

### CARRIAGE OF PASSENGERS BY ROAD.



## CHAPTER XXIX.

### CARRIERS OF PASSENGERS BY STAGE AND HACKNEY CARRIAGES.



#### I.—GENERALLY.

**308.** It is true of a carrier of passengers by road as **Ch. XXIX.**  
it is of such a carrier by railway that if he holds him- **Art. 308.**  
self out to the public generally as such a carrier he  
must receive all persons as passengers who offer them-  
selves in a fit state to be carried and ready to pay the  
proper fare and conform to all reasonable requirements  
as to carriage, unless his conveyance be already so full  
that he is unable to carry them. *Clarke v. West Ham*  
*Corporation*, [1909] 2 K. B. 858; 79 L. J. K. B. 56.

See *ante*, Art. 269.

Passenger carriers have a right to demand and to receive their fare at the time when the passenger engages his seat; and if he refuses to pay it, they may fill up the place with other passengers who are ready to make the proper deposit, but this cannot be done if the whole of the fare has been paid. *Ker v. Mountain* 1 Esp. 27.

A municipal corporation owned and ran omnibuses. They published an order, which was duly exhibited in each omnibus,



Ch. XXIX.  
Art. 308.

that passengers were not allowed to travel on the top of the omnibus between certain points. A passenger who refused to comply with this order and thereby delayed the omnibus was convicted of obstructing the corporation's servants in the execution of their duty. It was held, upon a case stated, that the corporation had not held themselves out as common carriers of passengers, but had expressed the limitations of their contract of carriage. He was clearly, therefore, not entitled to demand to travel on the top of the omnibus over that section, and had been rightly convicted. *Baker v. Ellison*, [1914] 2 K. B. 762; 83 L. J. K. B. 1335.

**309.** The carrier is bound to carry the passenger from the usual place of taking up to the usual place of setting down, and he cannot at any intermediate place refuse to proceed, the undertaking to carry to the journey's end being absolute. *Per* Lord Ellenborough in *Dudley v. Smith*, 1 Camp. 167, at p. 169; Story on Bailm. 9th ed. p. 592; Angell on Carriers, 5th ed. p. 479.

If the usual place of alighting from a stage coach is at an inn-yard, it has been decided that passengers cannot be compelled to get out even at the inn-gate. *Dudley v. Smith*, *supra*.

**310.** Carriers of passengers impliedly undertake to carry passengers within reasonable time and with reasonable speed.

In an action by a passenger against a carrier for breach of the contract to deliver him at his destination, he may claim as damages the expense of getting there by other means, if there be any, or compensation for the trouble and inconvenience of walking there, if there be no other means of getting there, because it is the direct object contemplated in the contract that he should reach his desti-

nation; but he is not entitled to claim compensation for an accidental injury or illness occasioned to him in the course of reaching his destination by such means, for such consequences are neither the proximate consequence of the breach of contract nor within the contemplation of the parties at the time of contracting. *Hobbs v. L. & S. W. Ry. Co.*, L. R. 10 Q. B. 111; 44 L. J. Q. B. 49; *ante*, Art. 277, p. 500.

Ch. XXIX.  
Art. 310.

**311.** Carriers of passengers are not insurers of their safety and are not responsible for accidents which all reasonable skill and diligence could not have prevented, but they are liable for negligence. *Aston v. Heaven*, 2 Esp. 533; *Christie v. Griggs*, 2 Camp. 79; *Crofts v. Waterhouse*, 3 Bing. 319.

The fact that a carriage has broken down or is defective is *prima facie* evidence of negligence (*Christie v. Griggs*, 2 Camp. 79), but if it can be shown that it was inevitable, the carrier will escape liability. *Aston v. Heaven*, 2 Esp. 533; *Readhead v. Mid. Ry. Co.*, L. R. 4 Q. B. 379; 38 L. J. Q. B. 169.

In all cases of negligent and improvident driving by a servant employed to drive, the master will be responsible if the servant was driving about the master's business, or using the master's horses and carriage for the master's benefit; and the master cannot exonerate himself from liability by showing that the servant was acting in disobedience of his orders. Where, therefore, an omnibus company gave written instructions to their drivers "to drive at a steady pace, and not on any account to race with or obstruct other omnibuses," and a driver disobeyed these instructions, and wilfully drew across the road to obstruct another omnibus, and ran against it and upset it, it was held that the instructions given by the omnibus company to their servants could not exonerate the company from responsibility for the acts of such servants done in the course of their service and believed by them to be for the benefit of the company. *Limpus v. L. G. Omnibus Co.*, 1 H. & C. 526; 32 L. J. Ex. 34.

**Ch. XXIX.**  
**Art. 311.**

A cabdriver, employed on the usual terms of paying so much a day for his cab and horse and keeping the rest himself is, as between the cab proprietor and the public, by virtue of the Acts relating to the subject, the servant of the proprietor, who is therefore liable for the cabdriver's negligence while acting within the scope of the purposes for which the cab is intrusted to him. *Powles v. Hider*, 6 E. & B. 207; 25 L. J. Q. B. 331; *Venables v. Smith*, 2 Q. B. D. 279; 46 L. J. Q. B. 470; *King v. London Improved Cab Co., Ltd.* (1889), 23 Q. B. D. 281. And where several persons are carrying on business as cab proprietors in partnership, this liability attaches to all, even though they are not all licensed proprietors. *Gates v. Bill*, [1902] 2 K. B. 38; 71 L. J. K. B. 702.

A passenger on a tramcar who, while the car is in motion, leaves his seat, and in the absence of the conductor goes upon the platform for the purpose of stopping the car by ringing the bell, does so at his own risk, in regard to an accident caused by the ordinary motion of the tramcar. *Martin v. Dublin United Tramways Co.*, [1909] 2 Ir. R. 13.

Where, however, the plaintiff was pushed off the tramcar before it had stopped by the crowd pressing to get out, the tramcar company was held to have been negligent in the particular circumstances of the case. *Pickering v. Belfast Corporation*, [1911] 2 Ir. R. 224.

The Board of Trade Regulations for cable traction on tramways, required that all tramcars should be so constructed as to enable the driver to command the fullest possible view of the road: Held, that the use of a tramcar with a staircase leading to the roof on the left side of the driver, which shut out from his view a small part of the road on that side, did not indicate such a want of reasonable regard for the safety of the public as to constitute fault on the part of the tramway company. *Cass v. Edinburgh and District Tramways Co.*, [1909] S. C. 1068.

As to contributory negligence by passenger, see *ante*, Art. 301, p. 558.

As to liability to the personal representatives of a passenger killed in an accident, see *ante*, Art. 291, p. 537. Ch. XXX.  
Art. 311.  
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**312.** Carriers of passengers whose charging powers are limited by statute cannot impose a condition relieving themselves from liability for negligence unless they give the passenger the alternative of being carried without any such condition upon his paying a higher fare. *Clarke v. West Ham Corporation*, [1909] 2 K. B. 858; 79 L. J. K. B. 56. See p. 16, *ante*.

*Semble*, if they publish alternative lists of fares, one containing the maximum rates and the other containing reduced rates, and give an option to the passenger to pay either the full rate without any condition limiting their liability or the reduced rate with such a condition, a passenger electing to pay the smaller rate would be bound by the condition. *Ibid*.

Cf. also *Baker v. Ellison*, [1914] 2 K. B. 762.

**313.** Carriers of passengers are bound to provide carriages reasonably strong and sufficient for the journey, with suitable harness, engines and equipment; and are liable for loss or damage resulting from such defects as would have been revealed by a proper examination thereof previous to the journey. *Bremner v. Williams*, 1 Car. & P. 414; *Christie v. Griggs*, 2 Camp. 79. There is, however, no warranty that the carriage is perfect. *Readhead v. Mid. Ry. Co.*, L. R. 4 Q. B. 379; 38 L. J. Q. B. 169.

This and the following Article only state what amounts to negligence within the meaning of Art. 311.

It is sufficient that the carrier should adopt the best known apparatus, kept in perfect order and worked without negligence by the servants he employs. If he does that he will not be

Ch. XXIX.  
Art. 313.

responsible for the consequences of a rare accident, which cannot, in a business sense, be prevented by any known means. Cf. observations of Cozens-Hardy, M. R., in *Newberry v. Bristol Tramways and Carriage Co.*, 107 L. T. 801, at p. 803.

Thus for example, when the wheel at the head of a trolley arm became detached and injured the plaintiff, upon proof by the tramway company that no contrivance had been discovered to prevent such a mishap, that the system of electric traction they adopted was the best and most widely used, that the apparatus in question was in perfect order and there was no negligence on the part of their servants, it was held there was no cause of action. *Ibid.*

Though there are no more outside passengers upon a coach than are allowed by statute, the owner will, nevertheless, be liable for an accident arising from a want of strength in any part of it. *Israel v. Clark*, 4 Esp. 259.

If, for example, a wheel comes off an omnibus, it is for the omnibus proprietor to prove that his vehicle was sound. *Lilly v. Tilling*, 57 S. J. 59.

314. Carriers of passengers are bound to provide careful drivers, of reasonable skill and good habits, for the journey; and to employ horses which are steady, and not vicious, or likely to endanger the safety of the passenger. *Christie v. Griggs*, 2 Camp. 79; *Crofts v. Waterhouse*, 3 Bing. 319.

"The coachman must have competent skill, and must use that skill with diligence; he must be well acquainted with the road he undertakes to drive; he must be provided with steady horses; a coach and harness of sufficient strength and properly made; and also with lights by night. If there be the least failure in any one of these things, the duty of the coach proprietors is not fulfilled, and they are answerable for any injury or damage that happens." *Per Best, C. J.*, in *Crofts v. Waterhouse*, 3 Bing. 319, at p. 321.

There may be occasions upon which it becomes necessary for the driver to deviate, to a reasonable extent, from the proper side of the road. *Wayde v. Carr*, 2 Dow. & R. 255. In that case the Court said, at p. 256: "Whatever might be the law of the road, it was not to be considered as inflexible and imperatively governing a case of this description. In the crowded streets of a metropolis, where this accident happened, situations and circumstances might frequently arise where a deviation from what is called 'the law of the road' would not only be justifiable but absolutely necessary. Of this the jury were the best judges."

In an action against an omnibus proprietor for injury to a passenger, it was proved, on behalf of the latter, that he was sitting inside the omnibus and was injured by one of the horses kicking the front panel, constituting the back of his seat, and that on a subsequent examination marks of other kicks were seen. It was held that there was evidence of negligence of the defendants to go to the jury. *Simson v. L. G. Omnibus Co.*, L. R. 8 C. P. 390; 42 L. J. C. P. 112.

The fact that an omnibus company place on a greasy road omnibuses to ply for passengers, and those omnibuses on such a road are liable to become and do become uncontrollable through skidding, is not alone evidence of negligence. *Wing v. L. G. O. Co.*, [1909] 2 K. B. 652; 78 L. J. K. B. 1063.

**315.** Persons driving carriages are bound to exercise diligence to avoid driving against foot passengers. Such persons have a right to cross the highway. *Cotterill v. Starkey*, 8 Car. & P. 691.

If a person driving on the road cannot pull up because his reins break, that is no ground of defence for an injury done to a foot-passenger, because he is bound to have proper harness. *Ibid.*

Where a man pushing a truck was killed by being crushed against a wall by a tramcar, the driver of which having been told by someone having a better opportunity than he of seeing whether

**Ch. XXIX.** there was room to pass, to go on, there was held to be no evidence  
**Art. 315.** of negligence against the tramcar company. *Leaver v. Pontypridd U. C.*, 76 J. P. 31.

So, too, where a passenger passing behind a tramcar was knocked down by another tramcar proceeding in the opposite direction, no action will lie if the passenger did not look to see whether a car was coming, even though it be proved that the driver of the tramcar concerned failed to sound his bell, for the not looking was the proximate cause of the injury. *Macleod v. Edinburgh and District Tramways Co.*, [1913] S. C. 624.

**316.** Carriers of passengers are bound to receive and to take care of the usual luggage which it is customary to allow every passenger to carry for the journey, although they receive no specific compensation therefor, but simply receive their fare for the conveyance of the passenger. *Robinson v. Dunmore*, 2 Bos. & Pul. 416.

A cab proprietor is not a common carrier of luggage taken with the passenger. *Ross v. Hill*, 2 C. B. 877.

A passenger carrier has a lien for his fare, upon the luggage, but not upon the person of the passenger, nor the clothes he has on. *Wolf v. Summers*, 2 Camp. 631.

**317.** The contract between a passenger and his carrier is made by the payment of the fare by the passenger in exchange for a ticket, which operates as a receipt for the money and specifies to some extent the terms of the contract.

As to what terms are incorporated in the contract, see Art. 273, p. 489.

**318.** The contract so made is a contract to carry the passenger by one continuous contractual operation,

and does not, in the absence of special terms, entitle the passenger to alight at any intermediate stopping-place and to require the carrier to carry him to his destination by another and subsequent conveyance. *Bastable v. Metcalfe*, [1906] 2 K. B. 288. SA. XXIX.  
Art. 312.

In that case, a passenger on a tramcar took and paid for a ticket entitling him to travel for a certain distance: he alighted at an intermediate stopping place, and after walking for some distance in the direction of his destination, boarded another tramcar performing the same journey, and demanded to be carried to his destination without the payment of any further fare. It was held that the contract of carriage was determined by the passenger's act in alighting from the tramcar upon which he had contracted to be carried, and that he was liable to be convicted for travelling on the second tramcar without paying his fare.

## II.—STAGE COACHES OR CARRIAGES.

**319.** Vehicles used for the conveyance of passengers by land (otherwise than by railway) may be divided into two classes:—

(1) Stage coaches or carriages, in which passengers are charged separate and distinct fares or at the rate of separate and distinct fares for their respective seats.

(2) Hackney carriages, in which passengers are not so charged.

These terms are not, however, used uniformly; *e.g.*, a "hackney carriage" within the Town Police Clauses Act, 1847, s. 37, includes "an omnibus." See Art. 327, *infra*.

Stage carriages are subject to the provisions of the Stage Carriages Act, 1832 (2 & 3 Will. IV. c. 120), as amended by the London Hackney Carriages Act, 1833 (3 & 4 Will. IV.



**CH. XXIX.** c. 48), the Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79),  
**Art. 319.** the Revenue Act, 1869 (32 & 33 Vict. c. 14), the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), and numerous special Acts. Indeed, the special Acts to a great extent render obsolete the provisions of these general enactments in the districts to which they apply.

Hackney carriages will be found chiefly dealt with in the Town Police Clauses Acts, 1847 (10 & 11 Vict. c. 89) and 1889 (52 & 53 Vict. c. 14). *Vide* further, pp. 584 *et seq.*, *infra*.

Particular types of stage carriage are dealt with by separate Acts, as, for example, tramways, as to which reference should be made to the Tramways Act, 1870 (33 & 34 Vict. c. 78), or light railways, as to which see the Light Railways Act, 1896 (59 & 60 Vict. c. 48).

It is beyond the scope of this work to deal with this matter in detail, and reference may be made to Halsbury's Laws of England, vol. 27, tit. Street and Aerial Traffic and Tramways and Light Railways.

**320.** Every stage carriage must bear painted upon it in the prescribed manner the name of the proprietor and the number of passengers it is constructed to carry inside and outside. Stage Carriages Act, 1832 (2 & 3 Will. IV. c. 120), s. 6, and the Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79), s. 14.

As to the licensing of stage carriages, see Arts. 327 and 331, *infra*.

By the Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79), s. 15, if the number of passengers conveyed in any stage carriage is greater in the inside or outside than it is constructed to carry, the conductor is liable to a penalty. Permission is given by certain special Acts to carry a greater number of passengers on certain occasions. Cf., e.g., L.C.C. (Tramways and Improvements) Act, 1913 (3 & 4 Geo. V. c. cii.).

In *Phesse v. Fisher*, [1915] 1 K. B. 572; 84 L. J. K. B. 277, the respondent was summoned under sect. 15 of the Railway Passenger Duty Act, 1842. The tramcar in question was licensed to carry 44 passengers in the upper compartment, and 30 in the lower. The respondent, who was the conductor, had allowed 48 persons to travel in the upper compartment, which was covered, and alleged his right to do so under a special Act which authorised an excess of passengers "inside" the tramcar. It was held that the upper compartment was not the inside of the tramcar, although it was covered, and that the respondent was liable to conviction.

A motor omnibus is a stage carriage within the Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79). *Dennis v. Miles*, [1924] W. N. 173.

**321.** There are regulations as to the carriage of luggage. Cf. Stage Carriages Act, 1832 (2 & 3 Will. IV. c. 120), ss. 37 and 43, and as to the number of outside passengers in certain cases. Railway Passenger Duty Act, 1842 (5 & 6 Vict. c. 79), s. 17.

**322.** The Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 51, enacts that any person who travelling in a tramway car avoids or attempts to avoid payment of his fare or "having paid his fare for a certain distance, knowingly and wilfully proceeds in any" tramway car "beyond such distance and does not pay the additional fare for the additional distance" shall be liable to a penalty. A person cannot be convicted of an offence under this section unless it appears that he acted with a fraudulent intention. *Nimmo v. Lanarkshire Tramways Co.*, [1912] S. C. (J.) 23.

By the Tramways Act, 1870, s. 52, power is given to the servants of the tramway company and all

Ch. XXIX.  
Art. 333.

persons called by them to their assistance to seize and detain any person offending against sect. 51 and whose name or residence is unknown to such servant.

Besides the powers given to a tramway company by the Tramways Act, 1870, ss. 51 and 52, they have a common law right as owners of a tramcar to eject a trespasser from their property, and the conductor of one of their tramcars can eject therefrom a person who refuses to pay his fare. If in so doing he uses unnecessary violence he commits a tort, and it is committed in the course of his service. *Whittaker v. L.C.C.*, [1915] 2 K. B. 676; 84 L. J. K. B. 1446.

Whether the conductor of a tramway car who removes a passenger from the car was acting in the supposed exercise of his powers under bye-laws, or was actuated by personal malice in consequence of something which had passed between him and the passenger, is a question which should be left to the jury, and the judge at the trial is not justified in withdrawing the case from them on the ground that there was no evidence which could make the conductor's principals liable in an action for damages for assault brought against them by the passenger, in a case in which evidence is before the Court that the passenger was ejected by the conductor, and had in fact at the time of the ejection not paid his fare. *Hutchins v. L.C.C.*, 85 L. J. K. B. 1177; 32 T. L. R. 179.

**323.** Where the servant of a corporation acting in the course of and within the general scope of his employment improperly exceeds the power conferred by their bye-laws upon his employers, the corporation is liable. *Percy v. Corporation of Glasgow*, [1922] 2 A. C. 299.

In that case a passenger on a corporation tramway car tendered coin which the conductor rejected and summoned an inspector.

The coin was a proper tender, and the passenger refused on request to pay another. He was then given in charge by the conductor and inspector notwithstanding that he offered them his name and address. He thereupon brought an action against the corporation for false imprisonment. Ch. XXXIX.  
Art. 598.

**324.** Where a tramway company are bound by their private Act to run cars for workmen at reduced rates specified in the Act, *semble*, they cannot discriminate in the matter of fares between workmen and other passengers who are allowed to use the cars for workmen. *Nimmo v. Lanarkshire Tramways Co.*, [1912] S. C. (J.) 23.

Where a tramway company are required by statute to provide a service of trams for "artizans, mechanics, and daily labourers" at certain reduced fares at certain hours, an ex-soldier who had been employed as a caretaker since 1912 until the outbreak of war, and had then joined the Royal Defence Corps and was engaged in guarding a camp in which German civilians were interned, in which employment he was on duty for twenty-four hours and then off duty for a like time, was held not to be a daily labourer. *McDonald v. Brown*, 87 L. J. K. B. 1119; 34 T. L. R. 358.

A daily labourer is one who with some substantial regularity supports himself by manual labour. *Ibid.*

**325.** By the London County Council (Tramways and Improvements) Act, 1911 (1 & 2 Geo. V. c. cvi.), s. 45, a passenger travelling on one of the Council's tramways is entitled to take with him his personal luggage "not exceeding 28 lb. in weight without any charge," subject to certain conditions.

The Council are not common carriers of luggage so carried. *Rosenthal v. L.C.C.*, [1924] W. N. 165. See *ante*, p. 15.

**Ch. XXIX.  
Act. 222.**

**326.** The promoters of a tramway and their lessees may charge such fares as they please not exceeding the sums specified in their special Act. They must exhibit a list of the fares authorised to be taken in a conspicuous place both inside and outside each tramway car. Tramways Act, 1870, s. 45.

Orders have been issued from time to time by the Minister of Transport under the Statutory Undertakings (Temporary Increase of Charges) Act, 1918 (8 & 9 Geo. V. c. 34), and the Tramways (Temporary Increase of Charges) Act, 1920 (10 & 11 Geo. V. c. 14), as continued by the Expiring Laws Continuance Acts, authorising increases of fares in modification of the existing special Acts.

### III.—HACKNEY CARRIAGES.

#### (a) *Outside the Metropolis.*

**327.** Where a special Act has been passed for the regulation of a town or district defined therein, the body entrusted with power thereunder may from time to time licence to ply for hire within the prescribed distance such number of hackney carriages as they think fit. Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 37.

The law relating to hackney carriages in general will be found set out in the above-named statute, ss. 37—68, as amended by the Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14).

The expression "hackney carriage" in the Act of 1847, ss. 37, 40—42, 54, 58, and 60—67, includes an "omnibus." Town Police Clauses Act, 1889, s. 4 (1).

A tramcar is a "hackney carriage" within the meaning of the Town Police Clauses Act, 1847, s. 38. *Blackpool and Fleetwood Tramroad Co. v. Bailey*, [1920] 1 K. B. 380; 89 L. J. K. B. 784. G. XXIX.  
Art. 227.

A local authority has the like power of granting licences with respect to tramcars. Tramways Act, 1870, s. 48.

On the other hand, a motor charabanc running on a stated route, and carrying passengers who each pay a separate fare, has been held not to be a "hackney carriage" within the regulations for hackney carriages contained in the Burgh Police (Scotland) Act, 1892, c. 55, Sched. V. *Craik v. Wood*, [1921] S. C. (J.) 27.

A carriage is a hackney carriage if "used in standing or plying for hire in any street" (sect. 38 of the Town Police Clauses Act, 1847). A proprietor of such a carriage was held to be properly convicted for breach of a bye-law relating to hackney carriages, although the carriage was sent direct from his yard to the house of the person who had ordered it. *Hawkins v. Edwards*, [1901] 2 K. B. 169; 70 L. J. K. B. 597.

The carriages used on a light railway, constructed and worked under the powers given by the Light Railways Act, 1896, and orders made thereunder, are not "omnibuses" or "hackney carriages" within the meaning of the Town Police Clauses Acts, 1847 and 1889, and do not, therefore, require to be licensed to ply for hire in the streets of a town under sect. 37 of the Act of 1847. *Yorkshire (Woollen District) Electric Tramways, Ltd. v. Ellis*, [1905] 1 K. B. 396; 74 L. J. K. B. 172.

An omnibus plying between the district of A., the urban council of which had refused to license the omnibus, and the neighbouring city of B., provided that it takes up passengers in A. as well as in B., is plying for hire without a licence. *R. v. Fletcher, Ex parte Ansonia*, 98 L. T. 749.

Since the Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14), the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 45,

**Ch. XXIX.** is not to be read as limited to the case of a hackney carriage  
**Art. 227.** which, within the meaning of sect. 38 of the 1847 Act, is standing or plying for hire in a street. By the later Act an omnibus becomes a hackney carriage for any of the purposes of the earlier Act, and if it plies for hire within the prescribed distance without a licence it is within sect. 45, although it does not stand or ply for hire in a street. When, therefore, an omnibus company employ a motor omnibus to ply between two boroughs, the omnibus must be licensed by both. *Birmingham and Midland Motor Omnibus Co. v. Thomson*, [1918] 2 K. B. 105; 87 L. J. K. B. 915.

**328.** Any driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the Commissioners, or in any street, who refuses or neglects, without reasonable excuse, to drive such carriage to any place within the prescribed distance, or the distance to be appointed by any bye-law of the Commissioners, not exceeding the prescribed distance, to which he is directed to drive by the person hiring or wishing to hire such carriage, shall for every such offence be liable to a penalty not exceeding forty shillings. Town Police Clauses Act, 1847, s. 53.

A driver in the employment of a firm of livery stable proprietors, who had received an order which they could not execute, directed a driver of a hackney carriage, standing on a stand for such carriages, to drive his carriage to a place within the prescribed distance and to drive a passenger to the railway station. The driver refused, and was held liable to be convicted under this section. The employee of the livery stable proprietors was a person "wishing to hire" within the above section. *Shepherd v. Hack*, 86 L. J. K. B. 1480. .

**329.** The local authority has power to make bye-laws fixing the rates or fares to be paid for hackney carriages. Town Police Clauses Act, 1847, s. 68. CH. XXIX.  
Art. 329.

It is to be observed that this section does not apply to omnibuses. A local authority is therefore not entitled to take into consideration the fares charged in considering an application for licences for omnibuses to ply for hire in its district, and may not refuse to grant a licence on the ground that the fares charged are excessive. *R. v. Farnborough U. D. C., Ex parte Aldershot District Traction Co.*, [1920] 1 K. B. 234.

An infant in arms is not a child for the purpose of extra payment for an additional person within the S. R. & O. No. 426, Sched. K., of May 1, 1917. *Kemp v. Lubbock*, [1920] 1 K. B. 253; 89 L. J. K. B. 239.

A special Act empowered a corporation to make bye-laws "for fixing the stands of hackney carriages . . . and the distance to which they may be compelled to take passengers not exceeding three miles beyond the boundary of the borough," and "for fixing the rates or fares to be paid for such hackney carriages."

A driver of such a carriage having driven two passengers from a spot within the boundary to a point  $8\frac{1}{2}$  miles beyond it charged a fare in excess of the fare fixed by the bye-laws. It was held he could not be convicted, *inter alia*, because the Act conferred no power to make bye-laws covering a distance of more than three miles beyond the borough boundary. *Ely v. Godfrey*, 126 L. T. 664.

The L. Corporation made the following bye-law: "The owner of every motor hackney carriage shall have fitted on such carriage an efficient lamp solely for the purpose of illuminating the dial of the taximeter whenever it is necessary in such a manner that the amount of fare recorded can be clearly seen from the inside of the carriage at all times, and every driver shall see that the lamp is properly lighted and adjusted and so kept." The words "whenever it is necessary" applied both to the driver and



Art. 329.

the owner. It requires the lamp to be fitted by the owner and kept alight by the driver. It is not unreasonable that the lamp should be solely for the purpose of lighting the dial, and the bye-law is therefore valid. *Dunning v. Maher*, 106 L. T. 846.

**330.** So far as the public is concerned, the registered proprietor of a hackney carriage is responsible for the acts of the driver whilst he is plying for hire, as if the relationship of master and servant existed between them, even though it does not in fact exist. *Keen v. Henry*, [1894] 1 Q. B. 292; *Bygraves v. Dicker*, [1923] 2 K. B. 585.

(b) *In the Metropolis.*

**331.** Within the Metropolitan Police District and the City of London hackney and stage carriages and their drivers and conductors are licensed by the Commissioner of Metropolitan Police. Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), ss. 6, 11.

Tramcars and light railway cars are subject to the same provisions as stage carriages. London Cab and Stage Carriage Act, 1907 (7 Edw. VII. c. 55), s. 5, and Order of 1st May, 1917, S. R. & O. 1917, No. 426, para. 17.

The Commissioner was appointed to grant all licences in respect of cabs and stage carriages by the Home Secretary. S. R. & O., 1917, No. 426, dated 1st May, 1917.

In that order will be found particulars of the licensing requirements.

The Commissioner of Police is not entitled to lay down and

act upon a general rule to refuse a licence for a cab where the applicant for the licence holds his cab under a hire-purchase agreement. *R. v. Met. Police Commissioner, Ex parte Randall*, 27 T. L. R. 505. CH. XXIX.  
Art. 381.

Under regulations dated 30th December, 1907 (now replaced by the Order of 1917, *ante*), made by the Secretary of State in pursuance of the Metropolitan Public Carriage Act, 1869, ss. 6 and 11, the Commissioner of the Metropolitan Police has not a general discretion in regard to the granting or refusing of a licence for a cab or a stage carriage. This discretion is limited to the excepted cases set out in clauses (a) and (b) of Regulation 1. *R. v. Met. Police Commissioner, Ex parte Holloway*, [1911] 2 K. B. 1131; 81 L. J. K. B. 205; overruling *R. v. Met. Police Commissioner, Ex parte Pearce*, 80 L. J. K. B. 223.

The person to whom the licence for a taxicab has been issued, and whose name appears under the heading "proprietor" in the register of licences of hackney carriages for the Metropolitan district, is not precluded from bringing evidence to show that he is not the owner, and therefore not liable for the negligence of the driver of the taxicab. *Kemp v. Elisha*, [1918] 1 K. B. 228; 87 L. J. K. B. 428.

The effect of the provisions of the Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), and the Hackney and Stage Carriages (Metropolitan and City Police Districts) Order, 1907, was considered in this case. *Ibid.*

**332.** If any unlicensed hackney or stage carriage plies for hire the owner of such carriage shall be liable to a penalty not exceeding 5*l.* for every day during which such unlicensed carriage plies. Metropolitan Public Carriage Act, 1869 (32 & 33 Vict. c. 115), s. 7.

"Plying for hire" means soliciting custom without any previous contract. There must be a waiting to secure passengers

**Ch. XXIX.** by the driver or other person in control without any previous  
**Art. 533.** contract with them, and the person in control who is engaged in so waiting must be in possession of a carriage for which he is waiting to obtain passengers. *Sales v. Lake*, [1922] 1 K. B. 553; 91 L. J. K. B. 563.

In that case the respondents organised tours from London to various parts of the country, and intending passengers before the journey booked their seats, paid for their tickets and arranged where to be picked up. The respondents then hired a charabano, and the driver picked up those passengers who had taken tickets only at the places arranged. It was held that there was no plying for hire.

**333.** Every hackney carriage standing in any street or place, and having thereon any of the numbered plates required by law to be affixed, is, unless actually hired, deemed to be plying for hire, although such hackney carriage is not on any standing or place usually appropriated for the purpose of hackney carriages standing or plying for hire; and the driver of every such hackney carriage which is not actually hired is obliged and compellable to go with any person desirous of hiring such hackney carriage. Hackney Carriages Act, 1831 (1 & 2 Will. IV. c. 22), s. 35.

The driver of every such hackney carriage must, if required by the hirer thereof, carry in and by such carriage the number of persons painted or marked thereon, or any less number of persons. Hackney and Stage Carriages (London) Act, 1853 (16 & 17 Vict. c. 33), s. 9.

A hackney carriage whilst on the premises of a railway company by their leave for the accommodation of passengers by their trains is not "plying for hire" in any "street or place" within the meaning of the Hackney Carriage Acts, and the driver of

such carriage cannot under those Acts be compelled to convey Ch. XXXI.  
 any person desirous of hiring it. *Semble* (*per* Bramwell, B.), Art. 334.  
 if the driver consent to be hired, the regulations of the Hackney  
 Carriage Acts as to the amount of fare payable will attach.  
*Case v. Storey*, L. R. 4 Ex. 319; 38 L. J. M. C. 113.

Drivers of cabs may stand and ply for hire with such carriages  
 on Sunday, and if they do so are liable and compellable to do the  
 like work on Sunday as they are on other days. 1 & 2 Will. IV.  
 c. 22, s. 37.

The penalty imposed by the London Hackney Carriages Act,  
 1853, s. 19, applies to regulations made by the Commissioner of  
 Police under the London Hackney Carriage Act, 1850, s. 4,  
 which contains no penalty clause, and a magistrate has therefore  
 power to inflict a penalty in respect of the breach of such a regu-  
 lation. *Willingale v. Norris*, [1909] 1 K. B. 57; 78 L. J.  
 K. B. 69.

**334.** The driver of every hackney carriage which  
 plies for hire must (unless such driver have a reason-  
 able excuse, to be allowed by the magistrate before  
 whom the matter shall be brought in question) drive  
 such hackney carriage to any place to which he shall  
 be required by the hirer thereof to drive the same,  
 not exceeding six miles from the place of hiring, or  
 for any time not exceeding one hour from the time  
 when hired. When hired by time the driver may be  
 required to drive at any rate not exceeding four miles  
 an hour, but if required to drive more than four  
 miles an hour the driver is entitled to demand, in  
 addition to the fare regulated by time, for every mile  
 or part of a mile exceeding four miles the fare  
 regulated by distance. Hackney and Stage Carriages  
 (London) Act, 1853, s. 7.

**GA. XXX.  
Art. 324.**

By sect. 17 of the same Act a driver of a hackney carriage (presumably when hired by distance) is liable to a penalty if he fails to drive at a reasonable speed, which is defined as being not less than six miles an hour.

A cabdriver is bound to drive the fare to any place where he can gain admittance, even though such a place may be private property, as, for instance, a railway station. *Ex parte Kippina*, [1897] 1 Q. B. 1; 66 L. J. Q. B. 95.

**335.** In the admission of cabs to a railway station, or in the treatment of cabs while in a railway station, *i.e.*, in the metropolitan district, the railway company having the control of the station shall not show any preference to any cab, or give any cab a privilege, which is not given to other cabs; and where any charge is made in respect of the admission of any cab to a railway station for the purpose of plying for hire therein, the charge made shall not exceed such sum as may be allowed by the Secretary of State.

If it is proved to the satisfaction of the Secretary of State that it will not be possible to obtain a sufficient supply of cabs at a railway station for the proper accommodation of the public, unless the operation of this section is suspended or modified as respects that station, the Secretary of State may by order so modify or suspend the operation of this section with respect to that station, subject to such conditions as may be specified in the orders. The London Cab and Stage Carriage Act, 1907, s. 2.

**336.** The driver of every hackney carriage is bound to carry in or upon it a reasonable quantity of luggage

for every person hiring it. ' 16 & 17 Vict. c. 33, ~~Ch. XXIX.~~  
s. 10. Art. 303.

If any luggage is carried outside the hackney carriage the driver is entitled to an extra payment of 9*d.* for each bicycle, child's mailcart or perambulator, and 3*d.* for every other package carried outside, whatever may be the number of passengers carried. S. R. & O. 1920, No. 293, Sched. K, dated 20th February, 1920, made by the Secretary of State in pursuance of the Metropolitan Public Carriage Act, 1869, and the London Cab and Stage Carriage Act, 1907.

**337.** The hiring of a cab not fitted with a taximeter recording the fare by a combination of time and distance may be according to distance or time, at the option of the hirer, expressed at the commencement of the hiring. If not otherwise expressed, the fare is to be paid according to distance. S. R. & O. 1917, No. 426, para. 39.

The Secretary of State shall have power, by regulations made under sect. 9 of the Metropolitan Public Carriage Act, 1869, to fix the fares to be paid for the hire in London of cabs fitted with taximeters, either on the basis of time or distance or both, and so as to differ for different classes of cabs and under different circumstances.

Provided that the fare fixed for horse cabs fitted with taximeters shall not be less than at the rate of 6*d.* for every mile so far as the fare is fixed on the basis of distance, and of 6*d.* for every twelve minutes so far as the fare is fixed on the basis of time, and that no fare shall be less than 6*d.*

**Ch. XXIX.**  
**Art. 337.**

Regulations made under this section, so far as inconsistent with any enactment relating to the fare to be paid for the hire of cabs in London, shall take effect notwithstanding that enactment, and any enactment relating to cabs in London shall, as respects cabs for which fares are fixed by this Act, be construed as if a reference to the fares so fixed were substituted for a reference to the fares fixed under any of those enactments. London Cab and Stage Carriage Act, 1907 (7 Edw. VII. c. 55), s. 1.

Full details of charges authorised may be found in the S. R. & O., 1917, No. 426, dated 1st May, 1917, as amended by S. R. & O., 1920, No. 293, dated 20th February, 1920.

As to the fares payable for hiring horse-drawn cabs, see S. R. & O., 1918, No. 965, dated 25th July, 1918, extended by S. R. & O., 1921, No. 1771, dated 18th November, 1921.

**338.** Every driver or conductor of an omnibus who refuses to admit and carry at the lawful fare any passenger for whom there is room, and to whose admission no reasonable objection is made, or who demands more than the legal fare for any passenger, is liable to a fine of 20s. Hackney Carriages (London) Act, 1843, s. 33.

**339.** There must be kept distinctly painted, in a conspicuous manner, on the inside of every metropolitan stage carriage, a table of the fares to be demanded of the passengers. The fares specified in this table are to be deemed to be the only lawful fares; and may be recovered by the driver or conductor, as in the case

of hackney carriages, before a magistrate. Hackney ~~ca. xxxi.~~  
Carriages (London) Act, 1843, s. 7. ~~Art. 337.~~

The legislature has fixed the tariff for the hire of cabs (*ante*, Art. 337), but has permitted omnibus proprietors to fix their own scale of charges.

The driver of an omnibus who receives a parcel to carry, even without reward, is personally liable for its loss if it be due to his negligence. *Beauchamp v. Powley*, 1 Moo. & R. 38.





## APPENDIX.

**N.B.—THE CONDITIONS CONTAINED IN THIS APPENDIX DO NOT COME INTO OPERATION UNTIL A DATE TO BE APPOINTED BY THE RAILWAY RATES TRIBUNAL. (RAILWAYS ACT, 1921, § 43 (1).) UNTIL THAT DATE THE LAW AS STATED AT THE FOOT OF P. 133, ANTE, AND FOLLOWING PAGES WILL GOVERN THE CONDITIONS OF CARRIAGE OF MERCHANDISE BY RAILWAY.**

### Form A.

### Appendix.

**THE STANDARD TERMS AND CONDITIONS OF CARRIAGE OF MERCHANDISE (other than Dangerous Goods and Merchandise for which Terms and Conditions are specially provided) WHEN CARRIED BY MERCHANDISE TRAIN AT COMPANY'S RISK RATES.**

#### CONDITION 1.

Every consignment of merchandise shall (except as otherwise agreed in writing) be addressed in accordance with the Company's Regulations settled by the Railway Rates Tribunal, and shall be accompanied by a consignment note on which shall be stated:—

- (a) The full names and addresses of the sender and the consignee.
- (b) The station or place of destination.
- (c) Such particulars as the Company may reasonably require of the nature, weight (inclusive of packing) and number of the parcels, articles or merchandise handed to the Company for carriage to enable them to calculate the charges therefor.
- (d) Whether (when the Company do not require prepayment) the charges are to be paid by the sender or by the consignee, and
- (e) Where by arrangement with the Company the merchandise is accepted "To wait order" at any particular station, that the consignment is "To wait order."

The Company, shall if so required, sign a document, prepared by the sender, acknowledging the receipt of the consignment, but no such document shall be evidence of the condition or of the correctness of the declared nature, quantity or weight of the consignment at the time it is received by them.

**Appendix.****CONDITION 2.**

Every truck loaded in a siding not belonging to the Company shall (except as otherwise agreed in writing generally or in respect of a particular consignment) be labelled by the Trader with two labels, which shall be securely affixed one on each side of the truck, and upon each such label shall be stated:—

- (a) The name of the sender.
- (b) The name of the consignee (except where the truck is loaded with merchandise for more than one consignee).
- (c) The station or place of destination and where such station or place is served by more than one company the name of the delivering company.
- (d) The nature of the merchandise.
- (e) The actual weight, or where this is not practicable, the approximate weight, of the merchandise inclusive of packing.
- (f) The name of the owner and number of the truck.

**CONDITION 3.**

The Company shall subject to these conditions be liable for any loss, or misdelivery of or damage to merchandise occasioned during transit, as defined by these Conditions, unless the Company shall prove that such loss, misdelivery or damage has arisen from:—

- (a) Act of God.
- (b) Act of war or of the King's enemies.
- (c) Arrest or restraint of Princes, or Rulers, or seizure under legal process.
- (d) Orders or restrictions imposed by the Government or any Department thereof.
- (e) Act or omission of the Trader, his servant, or agent.
- (f) Inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the merchandise.
- (g) Casualty (including fire or explosion).

Provided that:—

- (i) Where loss, misdelivery or damage arises and the Company have failed to prove that they used all reasonable foresight and care in the carriage of the merchandise, the Company shall not be relieved from liability for such loss, misdelivery or damage.

- (ii) The Company shall not incur liability of any kind in respect of merchandise where there has been fraud on the part of the Trader. Appendix

**CONDITION 4.**

The Company shall, subject to these Conditions, be liable for loss proved by the Trader to have been caused by delay to, or detention of, or unreasonable deviation in the carriage of merchandise unless the Company prove that such delay, or detention, or unreasonable deviation has arisen without negligence on the part of the Company or their servants.

**CONDITION 5.**

The Company shall not, whether the carriage be by land or water, or partly by land and partly by water, be liable for loss or injury (from whatever cause arising) of or to any articles or property described in the Carriers Act 1830, as amended by subsequent Acts, contained in any parcel or package when the value of such articles or property exceeds 25*l.* unless the nature and value thereof be declared on delivery to the Company for carriage and an increased charge over and above the charge for carriage at Company's risk rates be paid as compensation for the greater risk incurred or an undertaking to pay such increased charge be accepted.

**CONDITION 6.**

Every consignment of merchandise to be carried by the Company partly by land and partly by water, or wholly by water, shall be accompanied by a consignment note signed by the sender containing such terms and conditions applicable to the carriage of such merchandise by water as the Company are entitled to impose.

**CONDITION 7.**

In the case of merchandise consigned to a destination which entails transfer to an independent carrier which expression shall not include a Railway Company of Great Britain or a contractor employed by the Railway Company to deliver merchandise within the usual delivering area of a terminal station—

- (a) The Company's obligations and liability, notwithstanding that the merchandise may be addressed through to destination, or may be carried at a through rate, shall only relate or extend to those portions of the journey performed on

**Agents.**

the system of a Railway Company of Great Britain, or by a contractor employed by such Company to deliver merchandise within the usual delivering area of a terminal station. The transit by such Company shall (unless otherwise determined) be deemed to terminate—

where the journey is to be completed by any independent carrier, when the merchandise is tendered or transferred to any such carrier, or

shall be deemed to be suspended—

where the merchandise is to be carried by any independent carrier for an intermediate portion only of the journey when the merchandise is tendered to and not accepted by such carrier, or, if so accepted whilst it is in the possession of such carrier.

- (b) The Company and any succeeding carrier are authorised as agents for the sender or owner to contract for the further carriage upon the terms of any Bill of Lading or other Conditions usually required by any succeeding carrier.
- (c) When the place of destination is outside Great Britain, the Company shall not be liable for loss, damage, deviation, misdelivery, delay or detention, except upon proof that the same arose on the system of a Railway Company of Great Britain, or whilst the merchandise was being carried by a contractor employed by the Company to deliver merchandise within the usual delivering area of a terminal station.
- (d) When the place of destination is within Great Britain the Company shall not be liable for loss, damage, deviation, misdelivery, delay or detention upon proof by them that the same did not arise on the system of a Railway Company of Great Britain, or whilst the merchandise was being carried by a contractor employed by the Company to deliver merchandise within the usual delivering area of a terminal station.

#### CONDITION 8.

The Company shall not be liable:—

- (a)—(i) for loss from a package or from an unpacked consignment,
- (ii) for damage, deviation, misdelivery, delay or detention,
- unless they are advised thereof in writing (otherwise than

upon any of the Company's documents) at the forwarding or delivering station or at the District or Head Office of the forwarding or delivering Company within three days and the claim be made in writing within seven days after the termination of the transit of the consignment or the part of the consignment in respect of which the claim arises.

- (b) for non-delivery of the whole of a consignment or of any separate package forming part of a consignment addressed in accordance with Condition 1 hereof, unless they are advised of the non-delivery in writing (otherwise than upon any of the Company's documents) at the forwarding or delivering station or at the District or Head Office of the forwarding or delivering Company within 14 days, and the claim be made in writing within 28 days after receipt of the consignment by the Company to whom the same was handed by the sender.

Provided that if in any particular case a trader before action brought proves to the satisfaction of the Company, or, where the Company are not so satisfied, of the Railway Rates Tribunal, that it was not reasonably possible for him to advise the Company in writing or to make his claim in writing within the aforesaid times, and that such advice or claim was given within a reasonable time the Tribunal may if having regard to all the circumstances they consider it equitable declare that nothing in this Condition shall be a bar to the maintenance of proceedings against the Company.

#### **CONDITION 9.**

When the Company perform the cartage the place of collection or delivery at the Trader's premises shall be the usual place of loading or unloading the merchandise into or from the road vehicles, but the Company shall not be under obligation to provide any power plant and labour which, in addition to their carmen, may be required for loading or unloading road vehicles at such premises.

#### **CONDITION 10.**

The Company shall in every case when merchandise is consigned to a station (which in this Condition includes a siding provided by the Company for general public use) and is not to be delivered by the Company's road vehicle, or barge, or by truck alongside ship, give

Appendix. notice in writing (or by telephone, if so agreed in writing) of arrival to the consignee, or where his address is not known, or he refuses to take delivery, to the sender where it is reasonable and practicable so to do.

CONDITION 11.

The transit shall (unless otherwise previously determined) be deemed to be at an end—

- (a) In the case of merchandise to be carted by the Company, when it is tendered at the usual place of delivery as defined by Condition 9 hereof within the customary cartage hours of the delivery district or at such other times as may be agreed between the Company and the Trader.
- (b) In the case of merchandise not to be carted by the Company or to be retained by the Company awaiting order, at the expiration of one clear day after notice of arrival is given in writing (or by telephone if so agreed in writing) to or at the address of the consignee or, where the address of the consignee is not known, to or at the address of the sender, or where the addresses of both the sender and the consignee are not known at the expiration of one clear day after the arrival of the merchandise at the place to which it is consigned.
- (c) In the case of merchandise to be carried to a siding not belonging to the Company—
  - (i) When it is delivered upon the siding or at the place where, by arrangement, the Trader takes delivery; or
  - (ii) If the consignee is unable through no fault of the Company, or is unwilling to take delivery, at the expiration of one clear day after the receipt by the consignee of notice in writing (or by telephone if so agreed in writing) that the Company are ready and willing to deliver; or
  - (iii) If the consignee is prevented from taking delivery through the act or omission of the Company when the cause which has prevented him from taking delivery has been removed and the merchandise is delivered in accordance with paragraph (c) (1), or on the expiration of one clear day after receipt by the consignee of notice in writing (or by telephone if so agreed in writing) that the Company are ready and willing to deliver.

CONDITION 12.

Appendix.

After the termination of the transit, as defined by Condition 11 hereof, unless otherwise agreed in writing, the Company will hold the merchandise as warehousemen, subject to the usual charges and to the condition that they will not be liable for any loss, misdelivery or detention of or damage to—

- (i) Merchandise not properly protected by packing except upon proof that such loss, misdelivery, detention or damage arose from the negligence of the Company's servants and would have been suffered if the merchandise had been properly protected by packing, or
- (ii)—(a) Articles or property of the descriptions mentioned in the Carriers Act 1830 as amended by subsequent Acts, or  
(b) Merchandise which has arrived at the destination station and for which the Company give notice that they have not suitable accommodation,

by whomsoever such loss, misdelivery, detention or damage may be caused and whether occasioned by neglect or otherwise.

Provided that this Condition shall not relieve the Company from any liability they might otherwise incur under these Conditions in the unloading of the merchandise.

CONDITION 13.

The Company's charges for carriage shall be payable by the sender without prejudice to the Company's rights against the consignee or any other person.

Provided that when it is stated on the consignment note that charges are payable by the consignee the sender shall not be required to pay such charges unless the consignee fails to pay after reasonable demands have been made by the Company for payment thereof.

CONDITION 14.

Merchandise delivered to the Company will be received and held by them subject (a) to a lien for moneys due to them for the carriage of and other proper charges or expenses upon or in connection with such merchandise, and (b) to a general lien for any moneys or charges due to them from the owners of such merchandise for any services rendered or accommodation provided in relation to the carriage or custody of merchandise, and in case any lien is not satisfied within a reasonable time from the date upon which the



**Appendix** Company first gave notice of the exercise of their lien to the owners of the merchandise, the merchandise may be sold and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation thereto, and the Company shall account to the owners of the merchandise for any surplus.

CONDITION 15.

Where perishable merchandise—

- (a) is refused by the consignee, or
- (b) is not to be carted by the Company and is not taken away from the station of destination within a reasonable time after arrival, or
- (c) is not addressed or labelled in accordance with Condition 1 hereof, or
- (d) is not delivered in consequence of riots, civil commotions, strikes, lockouts, stoppage or restraint of labour, from whatever cause, whether partial, or general, or
- (e) is not delivered in consequence of damage or obstruction to the railway caused by flood or landslip where no reasonable alternative route is available,

the merchandise may be sold by the Company and payment or tender of the proceeds of any such sale after deduction of all proper charges and expenses in relation thereto shall (without prejudice to any claim or right which the sender or consignee may have against the Company otherwise arising under these Conditions) discharge the Company from all liability in respect of such merchandise or the carriage or delivery thereof.

Provided that—

- (i) The Company shall do what is reasonable to obtain the value of the merchandise.
- (ii) Where the merchandise is not carried through to the destination to which it was consigned by the sender the charges payable to the Company shall be those in operation for the journey actually completed, but shall not exceed the charges for the full transit.
- (iii) Where telegraphic or telephonic communication is reasonable and practicable the power of sale shall not be exercised unless notice has been given to the consignee in cases under (b) and (e) and to the sender in cases under (a) or (c) and the consignee or sender has failed to give

immediate instructions for disposal by telegraph, telephone, or by hand to the Company at the station from which the notice was sent. ~~Agreement~~

**CONDITION 16.**

Where merchandise (other than perishable)—

- (a) is held "To wait order" or "To be kept till called for" and such order is not given, or such merchandise is not removed within a reasonable time, or
- (b) is of a description for which the Company have not or do not provide accommodation at the place of destination, or
- (c) is unclaimed and the names and addresses of the sender and consignee are not known and cannot be ascertained, or
- (d) is refused by the consignee, or not delivered because the consignee is not known, and in either case the sender fails to take delivery, or to give instructions for disposal,

the Company may sell the same, either separately or by inclusion in a sale of unclaimed goods, and payment or tender of the proceeds of such sale, after deduction of all proper charges and expenses in relation thereto, shall (without prejudice to any claim or right which the sender or consignee may have against the Company otherwise arising under these Conditions) discharge the Company from all liability in respect of such merchandise or the carriage or delivery thereof.

Provided that—

- (i) The Company shall do what is reasonable to obtain the value of the merchandise.
- (ii) Where the merchandise is not carried through to the destination to which it was consigned by the sender, the charges payable to the Company shall be those in operation for the journey actually completed, but shall not exceed the charges for the full transit.
- (iii) The power of sale shall not be exercised (a) where the name and address of the sender or the consignee is known unless the Company shall have sent notice in writing by post or otherwise to the sender or consignee that the merchandise will be sold if not taken away within 14 days, or (b) where the names and addresses of the sender and consignee are not known unless the Company shall have published by advertisement in a newspaper circulating

Appendix.

within the district where the merchandise is held, or from which it was sent, if in Great Britain, notice of their intention to hold such sale unless the merchandise is taken away within 14 days after such publication.

## CONDITION 17.

The Company shall not in any case be liable for—

- (a) loss of a particular market, whether held daily or at intervals, or
- (b) indirect or consequential damages, or
- (c) subject to these Conditions, loss, damage or delay proved by the Company to have been caused by or to have arisen from—
  - (i) insufficient or improper packing; or
  - (ii) riots, civil commotions, strikes, lockouts, stoppage, or restraint of labour from whatever cause, whether partial or general; or
  - (iii) consignee not taking or accepting delivery within a reasonable time.

## CONDITION 18.

In the event of any loss of, or damage or delay to merchandise arising from a defect in a truck or sheet not belonging to or provided by the Company and upon proof by the Company that such loss, damage or delay was not due to any negligence of the Company's servants, the Company shall not be liable for—

- (a) loss of or damage or delay to merchandise contained in such truck or covered by such sheet arising from any such defect, or
- (b) loss of or damage or delay to merchandise which may be suffered by the Trader by whom such defective truck or sheet is provided and results from such defect.

## CONDITION 19.

Where loading or covering is performed by the sender, the Company shall not be liable for loss of or damage or delay to merchandise so loaded or covered upon proof by the Company that such loss, damage or delay would not have arisen but for faulty and/or improper loading or covering on the part of the sender. For the purpose of this Condition merchandise shall not be deemed to

be loaded or covered in a faulty and/or improper manner if loaded Appendix.  
or covered in the manner directed by the Company.

**CONDITION 20.**

In the absence of written notice to the contrary given to the Company at the time of delivery to them, all merchandise is warranted by the sender to be fit to be carried or stored in the condition in which it is handed to the Company, and not to be merchandise included in the Dangerous Goods Classification or unclassified merchandise of a kindred nature.

**CONDITION 21.**

Merchandise will be carried subject to any Conditions of Carriage included in the Conditions and Regulations in the General Railway Classification from time to time in force.

**CONDITION 22.**

The Company shall not be liable for failure to collect "Paid-on" charges in any case where, either before or after delivery, the person from whom such charges are to be collected fails to pay after reasonable demands have been made for payment thereof.

**CONDITION 23.**

The Company shall not in any case be liable for loss or damage directly occasioned by the failure of the Trader to comply with Conditions 1 and/or 2 hereof.

**CONDITION 24.**

Subject to these Conditions, the rights and liabilities of the Trader and the Company respectively, whether at Common Law or under any Statute, shall remain unaffected.

**CONDITION 25.**

These Conditions shall apply by whatever route the merchandise is carried.

**CONDITION 26.**

Any special Conditions which may from time to time be settled by the Railway Rates Tribunal in relation to the carriage of merchandise of a particular nature or description shall in respect of such

Appendix. merchandise prevail to the extent that such Conditions are in conflict with any of these Conditions.

CONDITION 27.

When a notice given in compliance with any of these Conditions is sent by post, service thereof shall be deemed to be made by properly addressing, prepaying and posting such notice, and unless the contrary is proved to have been effected at the time at which the notice should be delivered in the ordinary course of post.

CONDITION 28.

In the computation of time, where the period provided by these Conditions is seven days or less, Sunday, Good Friday, Christmas Day, or a Bank Holiday shall not be included.

Form B.

THE STANDARD TERMS AND CONDITIONS OF CARRIAGE OF (a) MERCHANDISE (other than Dangerous Goods and Merchandise for which Terms and Conditions are specially provided) WHEN CARRIED BY MERCHANDISE TRAIN AT OWNER'S RISK RATES and (b) MERCHANDISE WHICH IS INCLUDED IN THE CLASSIFICATION OF GOODS BY MERCHANDISE TRAIN AS ACCEPTED FOR CARRIAGE AT THE OWNER'S RISK ONLY.

CONDITION 1.

Every consignment of merchandise shall (except as otherwise agreed in writing) be addressed in accordance with the Company's Regulations settled by the Railway Rates Tribunal and shall be accompanied by a consignment note on which shall be stated:—

- (a) That the consignment is to be carried at "O.R." or "Owner's Risk,"
- (b) The full names and addresses of the sender and the consignee,
- (c) The station or place of destination,
- (d) Such particulars as the Company may reasonably require of the nature, weight (inclusive of packing) and number of the parcels, articles or merchandise handed to the Company for carriage to enable them to calculate the charges therefor,

- (e) Whether (when the Company do not require prepayment) the Appoints charges are to be paid by the sender or by the consignee, and
- (f) Where by arrangement with the Company the merchandise is accepted "To wait order" at any particular station that the consignment is "To wait order."

The Company shall, if so required, sign a document, prepared by the sender, acknowledging the receipt of the consignment, but no such document shall be evidence of the condition or of the correctness of the declared nature, quantity or weight of the consignment at the time it is received by them.

**CONDITION 2.**

[The same as Form A, Condition 2, *q.v.*]

**CONDITION 3.**

The Company shall not be liable for loss, damage, deviation, mis-delivery, delay or detention of or to a consignment or any part thereof, except upon proof that the same arose from the wilful misconduct of the Company or their servants.

Provided that nothing in this condition shall exempt the Company from any liability they might otherwise incur in the following cases:—

- (a) Non-delivery of the whole of a consignment or of any separate package forming part of a consignment, properly packed, and addressed in accordance with Condition 1 hereof, unless such non-delivery is due to accidents to trains or to fire.
- (b) Pilferage from packages of merchandise protected otherwise than by paper or other packing readily removable by hand, provided the pilferage is pointed out to a servant of the Company on or before delivery.
- (c) Misdelivery where merchandise addressed in accordance with Condition 1 hereof is not tendered to or placed at the disposal of the consignee within 28 days, or in the case of perishable merchandise within a reasonable time which shall not be less than 72 hours after receipt of the consignment by the Company to whom the same was handed by the sender.

Provided however that the Company shall not be liable in the said cases of non-delivery, pilferage or misdelivery upon proof by

Appendix. them that the same has not been caused by the negligence or misconduct of the Company or their servants.

#### CONDITION 4.

The Company shall not, whether the carriage be by land or water, or partly by land and partly by water, be liable for loss or injury (from whatever cause arising) of or to any articles or property described in the Carriers Act, 1830, as amended by subsequent Acts, contained in any parcel or package when the value of such articles or property exceeds 25*l.*, unless the nature and value thereof be declared on delivery to the Company for carriage and an increased charge over and above the charge for carriage at Owner's Risk Rates be paid as compensation for the greater risk incurred or an undertaking to pay such increased charge be accepted. Provided that when such declaration is made and such increased charge is paid or undertaking accepted the liability of the Company under these Conditions shall extend to the full value so declared.

#### CONDITION 5.

[The same as Form A, Condition 6, *q.v.*]

#### CONDITION 6.

[The same as Form A, Condition 7, paras. (a) and (b), *q.v.*]

- (c) The Company shall not be liable for loss, damage, deviation, misdelivery, delay or detention, except upon proof that the same arose on the system of a Railway Company of Great Britain, or whilst the merchandise was being carried by a contractor employed by the Company to deliver merchandise within the usual delivering area of a terminal station, and that the Company are liable therefor under these Conditions.

#### CONDITIONS 7—15.

[The same as Form A, Conditions 8—16, substituting for the reference in Condition 11 to Condition 9 a reference in Condition 10 to Condition 8, and for the reference in Condition 12 to Condition 11, a reference in Condition 11 to Condition 10.]

**CONDITION 16.**

**Appendix**

The Company shall not in any case be liable for—

- (a) loss of a particular market, whether held daily or at intervals,  
or
- (b) indirect or consequential damages, or
- (c) loss, damage, or delay to the extent to which the same is  
caused by or arises from—
  - (i) insufficient or improper packing; or
  - (ii) riots, civil commotions, strikes, lockouts, stoppage  
or restraint of labour from whatever cause, whether partial  
or general; or
  - (iii) consignee not taking or accepting delivery within  
a reasonable time.

**CONDITION 17.**

The Company shall not be liable for loss, damage or delay of or to merchandise due to faulty or improper loading or covering where the loading or covering is performed by the sender.

**CONDITIONS 18—26.**

[The same as Form A, Conditions 20,—28, *q.v.*]

**Form C.**

**THE STANDARD TERMS AND CONDITIONS OF CARRIAGE OF LIVE STOCK  
(other than Wild Animals) WHEN CARRIED BY MERCHANDISE  
TRAIN AT COMPANY'S RISK RATES.**

**CONDITION 1.**

All live stock (accompanied where necessary by any certificate, licence or other document required by the orders or regulations of any Government Department or other Authority) shall be consigned upon the Company's form of consignment note on which shall be stated:—

- (a) The full names and addresses of the sender and the consignee,
- (b) The station or place of destination,



Appendix.

- (c) The number and description of the live stock, and in the case of Overseas traffic their brands or marks,
- (d) The truck accommodation required when the live stock is to be charged at truck rates (distinguishing between small, medium or large trucks and part truck loads),
- (e) Whether (when the Company do not require prepayment) the charges are to be paid by the sender or by the consignee, and
- (f) The value of each head of live stock when declared to be of higher value than is mentioned in Condition 4 hereof.

## CONDITION 2.

When a person in charge of a consignment of live stock is permitted by the Company to travel by the train carrying the live stock, the sender shall state the name of such person in the space provided on the consignment note, and the person in charge shall sign the declaration and agreement printed thereon that he is such person in charge and that he relieves the Company from all liability to himself or to his representatives for loss of life, personal injury or delay, and for loss of or damage or delay to his property however caused.

## CONDITION 3.

The Company shall not be liable—

- (a) for injury to a consignment or any part thereof except upon proof by the Trader that the same was occasioned in transit by the neglect or default of the Company or their servants,
- (b) for loss of or from a consignment proved by the Trader to have been occasioned in transit, or for deviation, misdelivery, delay or detention upon proof by the Company that such loss, deviation, misdelivery, delay or detention was not occasioned by the neglect or default of the Company or their servants.

## CONDITION 4.

The Company shall not in any case be liable beyond the following sums: for any horse, 100*l.*; for any neat cattle per head, 50*l.*; for any sheep, ass, mule or pig, 5*l.*; for any dog, deer or goat, 2*l.*; for any rabbit or other small quadruped 7*s.* 6*d.* or for any head of poultry or other bird 7*s.* 6*d.*, unless a higher value be declared in

writing at the time of delivery to the Company to whom the same was handed by the sender, and an increased charge over and above the charge for carriage at Company's Risk Rates be paid as compensation for the greater risk incurred, in which case the Company will, subject to these Conditions, accept liability for the loss actually sustained, not exceeding the amount so declared. Appendix.

#### CONDITION 5.

Every consignment of live stock to be carried by the Company partly by land and partly by water, or wholly by water, shall be accompanied by a consignment note signed by the sender containing such terms and conditions applicable to the carriage of such live stock by water as the Company are entitled to impose.

#### CONDITION 6.

In the case of live stock consigned to a destination which entails transfer to an independent carrier which expression shall not include a Railway Company of Great Britain—

- (a) The Company's obligations and liability, notwithstanding that the live stock may be addressed through to destination, or may be carried at a through rate, shall only relate or extend to those portions of the journey performed on the system of a Railway Company of Great Britain. The transit by such Company shall (unless otherwise determined) be deemed to terminate—

where the journey is to be completed by any independent carrier, when the live stock is tendered or transferred to any such carrier, or  
shall be deemed to be suspended—

where the live stock is to be carried by any independent carrier for an intermediate portion only of the journey when the live stock is tendered to and not accepted by such carrier or, if so accepted, whilst it is in the possession of such carrier.

- (b) The Company and any succeeding carrier are authorised as agents for the sender or owner to contract for the further carriage upon the terms of any Bill of Lading or other Conditions usually required by any succeeding carrier.
- (c) The Company shall not be liable for loss, injury, deviation, misdelivery, delay or detention, except upon proof that the

Appendix.

same arose on the system of a Railway Company of Great Britain and that the Company are liable therefor under these Conditions.

## CONDITION 7.

The Company shall not be liable—

- (a) for loss from, or injury, deviation, misdelivery, delay or detention of or to a consignment, unless they are advised thereof in writing (otherwise than upon any of the Company's documents) at the forwarding or delivering station, or at the district or head office of the forwarding or delivering Company within 3 days and the claim be made in writing within 10 days after the termination of the transit of the consignment, or the part of the consignment in respect of which the claim arises.
- (b) for non-delivery of the whole of a consignment, unless they are advised thereof in writing (otherwise than upon any of the Company's documents) at the forwarding or delivering station, or at the district or head office of the forwarding or delivering Company within 14 days, and the claim be made in writing within 28 days after receipt of the consignment by the Company to whom the same was handed by the sender.

Provided that if in any particular case a trader before action brought proves to the satisfaction of the Company or, where the Company are not so satisfied, of the Railway Rates Tribunal, that it was not reasonably possible for him to advise the Company in writing or to make his claim in writing within the aforesaid times, and that such advice or claim was given within a reasonable time, the Tribunal may, if having regard to all the circumstances they consider it equitable, declare that the time limits specified in this Condition shall not be a bar to the maintenance of proceedings against the Company. In the computation of time, where the period provided by this Condition is 10 days or less, Sunday, Good Friday, Christmas Day, or a Bank Holiday shall not be included.

## CONDITION 8.

The transit shall (unless otherwise previously determined) be deemed to be at an end as soon as a reasonable opportunity has been given by the Company to the consignee to take delivery at the

place to which the live stock is consigned, but shall in no case ~~Appendix~~ extend beyond 24 hours after the arrival of the live stock at such place.

Provided that where telegraphic or telephonic communication is reasonable and practicable and either the sender or consignee has requested the Company in writing at his expense to advise the consignee of the arrival of the live stock the Company shall give such telegraphic or telephonic advice to the consignee at the expense of the party making the request.

#### **CONDITION 9.**

After the termination of the transit, as defined by Condition 8 hereof, unless otherwise agreed in writing, the Company will hold the live stock at the sole risk of the owner and subject (in addition to the charges for carriage) to reasonable charges for lairage or other accommodation or services.

#### **CONDITION 10.**

The Company's charges for carriage, and also any charges and expenses for the custody, care or maintenance of the live stock, or for any other service performed, accommodation provided or expenses incurred while the live stock remains in the possession of the Company or their agents, shall be payable by the sender without prejudice to the Company's rights against the consignee or any other person.

Provided that when it is stated on the consignment note that charges are payable by the consignee the sender shall not be required to pay such charges unless the consignee fails to pay after reasonable demands have been made by the Company for payment thereof.

#### **CONDITION 11.**

Live stock delivered to the Company will be received and held by them subject (a) to a lien for moneys due to them for the carriage of and other proper charges or expenses upon or in connection with such live stock and (b) to a general lien for any moneys or charges due to them from the owners of such live stock for any services rendered or accommodation provided in relation to the carriage or custody of merchandise and in case any lien is not satisfied within a reasonable time from the date upon which the Company first gave notice of the exercise of their lien to the owners of the live stock, the live stock may be sold and the proceeds of sale applied in or

Appendix. towards the satisfaction of every such lien and all proper charges and expenses in relation thereto, and the Company shall account to the owners of the live stock for any surplus.

#### CONDITION 12.

If any live stock—

- (a) is refused by the consignee, or
- (b) is not taken away from the station or place of destination within a reasonable time after arrival, or
- (c) is not delivered in consequence of incorrect or insufficient address being shown on the consignment note or in consequence of incorrect or imperfect branding or marking, and the sender is not known or declines to take delivery or to give instructions for disposal, or
- (d) is not delivered in consequence of riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general, or
- (e) is so injured in transit that having regard to all the circumstances it is reasonable to slaughter, or
- (f) dies in transit from any cause whatever, or
- (g) is not delivered in consequence of damage or obstruction to the railway caused by flood or landslip where no reasonable alternative route is available,

the live stock or the carcases of such live stock may be sold by the Company and payment or tender of the proceeds of any such sale after deduction of all proper charges and expenses in relation thereto shall (without prejudice to any claim or right which the sender or consignee may have against the Company otherwise arising under these Conditions) discharge the Company from all liability in respect of such live stock or the carriage or delivery thereof.

Provided that—

- (i) The Company shall do what is reasonable to obtain the value of the live stock, or the carcases of such live stock.
- (ii) Where the live stock is not carried through to the destination to which it was consigned by the sender the charges payable to the Company shall be those in operation for the journey actually completed, but shall not exceed the charges for the full transit.
- (iii) Where telegraphic or telephonic communication is reasonable and practicable the power of sale shall not be

exercised unless notice has been given to the consignee **Appendix.** in cases under (b), (e), (f) or (g) and to the sender in cases under (a) or (c), and the consignee or sender has failed to give immediate instructions for disposal by telegraph, telephone, or by hand to the Company at the station from which the notice was sent.

**CONDITION 13.**

The Company shall not in any case be liable for—

- (a) failure to convey or to deliver live stock within any certain or definite time, or in time for any particular market (whether held daily or at intervals), show or exhibition, or
- (b) indirect or consequential damages, or
- (c) loss, injury or delay proved by the Company to have been caused by or to have arisen from—
  - (i) incorrect or imperfect branding or marking, or
  - (ii) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general, or
  - (iii) consignee not taking or accepting delivery within a reasonable time, or
  - (iv) failure of the sender to protect or secure any live stock, or
  - (v) insufficiency or unsuitability of any article supplied by the sender for securing, protecting or conveying any live stock, or
  - (vi) incorrect selection or misdelivery of live stock occasioned by loading or unloading performed by the owner or his agent at any point of the transit.

Provided that as to sub-clauses (iii), (iv), (v) and (vi) the loss, injury or delay is not proved to have been proximately caused by or to have proximately arisen from negligence or default on the part of the Company or their servants.

**CONDITION 14.**

The Company shall not in any case be liable—

- (a) for the overloading of a truck or for one animal injuring another in cases where the charge for carriage is per truck or according to space occupied in the truck and the owner

**Appendix.**

or his agent loads as many animals in such truck as he considers may be conveyed with safety.

- (b) for loss, injury or delay caused by or arising from penning stabling or loading animals together of different classes or sexes when such loss, injury or delay is not caused by the neglect or default of the Company or their servants.

**CONDITION 15.**

Save and except as is provided by Statute, Statutory Order or Regulation, the Company shall be under no obligation to feed or water live stock whilst in their possession or custody unless by special request and agreement; but the Company may, in the absence of such request and agreement, feed or water live stock at the expense of the owner if in the opinion of the Company it is reasonable so to do, without incurring (in the absence of wilful misconduct) liability for any consequences thereof.

**CONDITION 16.**

Nothing in these Conditions shall deprive the Company of any warranty implied in law as to the fitness of live stock for carriage in the ordinary way.

**CONDITION 17.**

Live stock will be carried subject to any Conditions of Carriage included in the Conditions and Regulations in the Classification of Merchandise for Conveyance by Railway from time to time in force.

**CONDITION 18.**

The Company shall not be liable for failure to collect "Paid-on" charges in any case where, either before or after delivery, the person from whom such charges are to be collected fails to pay after reasonable demands have been made for payment thereof.

**CONDITION 19.**

The Company shall not in any case be liable for loss or damage directly occasioned by the failure of the Trader to comply with Condition 1 hereof.

**CONDITION 20.**

Subject to these Conditions, the rights and liabilities of the Trader and the Company respectively, whether at Common Law or under any Statute, shall remain unaffected.

## **LIVE STOCK—COMPANY'S RISK.**

612

### **CONDITION 21.**

**Applicable.**

These Conditions shall apply by whatever route the live stock is carried.

### **CONDITION 22.**

When a notice given in compliance with any of these Conditions is sent by post, service thereof shall be deemed to be made by properly addressing, prepaying and posting such notice, and, unless the contrary is proved, to have been effected at the time at which the notice should be delivered in the ordinary course of post.

### **CONDITION 23.**

In these Conditions the word "injury" includes fatal injury.

## **Form D.**

**THE STANDARD TERMS AND CONDITIONS OF CARRIAGE OF LIVE STOCK  
(other than Wild Animals), WHEN CARRIED BY MERCHANDISE  
TRAIN AT OWNER'S RISK RATES PURSUANT TO SECTION 46 OF  
THE RAILWAYS ACT, 1921.**

### **CONDITION 1.**

All live stock (accompanied where necessary by any certificate, licence or other document required by the orders or regulations of any Government Department or other Authority) shall be consigned upon the Company's form of consignment note, on which shall be stated:—

- (a) That the live stock is to be carried at "O.R." or "Owner's Risk."

[Then continue as Form C Condition 1 (a)—(f).]

### **CONDITION 2.**

[The same as Form C Condition 2 *q.v.*]

### **CONDITION 3.**

The Company shall not be liable for loss of or from a consignment or for injury, deviation, misdelivery, delay or detention of or to a consignment or any part thereof except upon proof by the Trader that



Appendix. the same was occasioned in transit by the wilful misconduct of the Company or their servants.

CONDITIONS 4—12.

[The same as Form C Conditions 4—12, except that in Condition 4, "owner's risk rates" is substituted for "Company's risk rates."]

CONDITION 13.

[The same as Form C Condition 13, except that the last paragraph commencing "provided that," is omitted.]

CONDITION 14.

The Company shall not in any case be liable—

- (a) for the overloading of a truck or for one animal injuring another in cases where the charge for carriage is per truck or according to space occupied in the truck and the owner or his agent loads as many animals in such truck as he considers may be conveyed with safety.
- (b) for loss, injury or delay caused by or arising from penning, stabling or loading animals together of different classes or sexes when such loss, injury or delay is not caused by the wilful misconduct of the Company or their servants.

CONDITIONS 15—23.

[The same as Form C Conditions 15—23.]

**Form E.**

**Appendix**

**THE STANDARD TERMS AND CONDITIONS OF CARRIAGE OF DAMAGEABLE  
GOODS NOT PROPERLY PROTECTED BY PACKING (IN THESE CON-  
DITIONS CALLED "GOODS") WHEN CARRIED BY MERCHANDISE  
TRAIN AT COMPANY'S RISK RATES.**

**CONDITION 1.**

Every consignment of goods shall (except as otherwise agreed in writing) be addressed in accordance with the Company's Regulations settled by the Railway Rates Tribunal, and shall be accompanied by a consignment note on which shall be stated:—

- (a) That the consignment consists of such goods,
- (b) The full names and addresses of the sender and the consignee,
- (c) The station or place of destination,
- (d) Such particulars as the Company may reasonably require of the nature, weight (inclusive of packing) and number of the parcels, articles or goods handed to the Company for carriage to enable them to calculate the charges therefor,
- (e) Whether (when the Company do not require prepayment) the charges are to be paid by the sender or by the consignee, and
- (f) Where by arrangement with the Company the goods are accepted "To wait order" at any particular station, that the consignment is "to wait order."

The Company shall, if so required, sign a document, prepared by the sender, acknowledging the receipt of the consignment, but no such document shall be evidence of the condition or of the correctness of the declared nature, quantity or weight of the consignment at the time it is received by them.

**CONDITION 2.**

[The same as Form A Condition 2, substituting the word "goods" for "merchandise" wherever that word occurs.]

**CONDITION 3.**

The Company shall not be liable for loss or damage except upon proof that the same (a) arose from the wilful misconduct of the Company or their servants, or (b) would have been suffered if the goods had been properly protected by packing and the Company

Appendix. would have been liable if the goods had been carried subject to the Standard Conditions applicable to the carriage of merchandise at Company's Risk Rates.

CONDITION 4.

The Company shall, subject to these Conditions, be liable for loss proved by the Trader to have been caused by delay to, or misdelivery or detention of, or unreasonable deviation in the carriage of goods unless the Company prove that such delay, misdelivery or detention, or unreasonable deviation has arisen without negligence on the part of the Company or their servants.

CONDITION 5.

The Company shall not, whether the carriage be by land or water, or partly by land and partly by water, be liable for loss or injury (from whatever cause arising) of or to any articles or property described in the Carriers Act, 1830, as amended by subsequent Acts, contained in any parcel or package when the value of such articles or property exceeds 25l.

CONDITIONS 6—11.

[The same as Form A Conditions 6—11, substituting the word "goods" for "merchandise" wherever that word occurs, and making the grammatical alterations consequent upon the use of a plural in place of a singular noun.]

CONDITION 12.

After the termination of the transit, as defined by Condition 11 hereof, unless otherwise agreed in writing, the Company will hold the goods as warehousemen, subject to the usual charges and to the condition that they will not be liable for any loss, misdelivery or detention thereof, or damage thereto, except upon proof that such loss, misdelivery, detention or damage, arose from the negligence of the Company or their servants and would have been suffered if the goods had been properly protected by packing, nor will the Company be liable for loss, misdelivery, or detention of or damage to:—

- (a) Articles or property of the descriptions mentioned in the Carriers Act, 1830, as amended by subsequent Acts, or
- (b) Goods which have arrived at the destination station and for which the Company give notice that they have not suitable accommodation,

by whomsoever such loss, misdelivery, detention or damage may Appendix be caused and whether occasioned by neglect or otherwise.

Provided that this Condition shall not relieve the Company from any liability they might otherwise incur under these Conditions in the unloading of the goods.

**CONDITIONS 13—16.**

[The same as Form A, Conditions 13—16, substituting the word "goods" for "merchandise" wherever that word occurs (except in line 6 of Condition 14) and making the grammatical alterations consequent upon the use of a plural in place of a singular noun.]

**CONDITION 17.**

The company shall not in any case be liable for—

- (a) loss of a particular market, whether held daily or at intervals, or
- (b) indirect or consequential damages, or
- (c) subject to these Conditions, loss, damage or delay to the extent to which the same is proved by the Company to have been caused by or to have arisen from—
  - (i) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general; or
  - (ii) consignee not taking or accepting delivery within a reasonable time.

**CONDITION 18.**

In the event of any loss of, or damage or delay to goods arising from a defect in a truck or sheet not belonging to or provided by the Company, and upon proof by the Company that such loss, damage or delay was not due to any negligence of the Company or their servants, the Company shall not be liable for—

- (a) loss of or damage or delay to goods contained in such truck or covered by such sheet arising from any such defect, or
- (b) loss of or damage or delay to merchandise which may be suffered by the Trader by whom such defective truck or sheet is provided and results from such defect.

**CONDITION 19.**

[The same as Form A, Condition 19, substituting the word "goods" for "merchandise."]

## Appendix.

## CONDITION 20.

In the absence of written notice to the contrary given to the Company at the time of delivery to them, all goods are (apart from the want of proper protection by packing) warranted by the sender to be fit to be carried or stored in the condition in which they are handed to the Company, and not to be merchandise included in the Dangerous Goods Classification or unclassified merchandise of a kindred nature.

## CONDITION 21.

Goods will be carried subject to any Conditions of Carriage included in the Conditions and Regulations in the Classification of Merchandise for Conveyance by Railway from time to time in force.

## CONDITIONS 22—28.

[The same as Form A Conditions 22—28, substituting the word "goods" for "merchandise" wherever that word occurs, and making the grammatical alterations consequent upon the use of a plural in place of a singular noun.]

## Form F.

## CONDITIONS LETTERED "F."

THE STANDARD TERMS AND CONDITIONS OF CARRIAGE OF COAL, COKE  
AND PATENT FUEL (WHICH IN THESE CONDITIONS ARE CALLED  
"FUEL") WHEN CARRIED BY MERCHANDISE TRAIN.

## CONDITION 1.

Every consignment of fuel shall (except as otherwise agreed in writing) be accompanied by a consignment note or declaration on which shall be stated—

- (a) The full names and addresses of the sender and the consignee.
- (b) The name of the colliery or point at which the fuel is tendered for conveyance,
- (c) The station or place of destination, and where such station or place is served by more than one Company the name of the delivering Company, and in the case of through traffic,

where practicable, the route by which the fuel is to be Appendix conveyed,

- (d) The name and number painted on each truck,
- (e) Such particulars as the Company may reasonably require of the nature and weight of the contents of each truck to enable them to calculate the charges therefor,
- (f) Where practicable the total weight of the consignment, and
- (g) To whose account the charges are to be placed when the Company do not require the carriage charges to be paid by the Owners of the Sending Colliery or Works.

#### CONDITION 2.

Every truck of fuel shall (except as otherwise agreed in writing generally or in respect of a particular consignment) be labelled by the Trader with two labels which shall be securely affixed one on each side of the truck and upon each such label shall be stated—

- (a) The name of the sender and either the name of the colliery or such other information as will indicate to the Company the point at which the fuel is tendered for conveyance.
- (b) The name of the consignee.
- (c) The station or place of destination and where such station or place is served by more than one Company the name of the delivering Company, and in the case of through traffic, where practicable, the route by which the fuel is to be conveyed,
- (d) The nature and, where reasonably practicable, the weight of the fuel, and
- (e) The name and number painted on the truck and the date of forwarding.

#### CONDITION 3.

The Company shall not be liable for loss, damage, deviation, misdelivery, delay or detention of or to a consignment or any part thereof unless occasioned by the neglect or default of the Company or their servants.

#### CONDITION 4.

In the case of fuel consigned to a destination which entails transfer to an independent carrier, which expression shall not include a Railway Company of Great Britain, the Company shall not be liable for loss, damage, deviation, misdelivery, delay or detention except upon

Appendix. proof that the same arose on the system of a Railway Company of Great Britain and that the Company are liable therefor under these Conditions.

#### CONDITION 5.

The Company shall not be liable:—

- (a)—(i) for loss from a consignment,  
           (ii) for damage, deviation, misdelivery, delay or detention,  
         unless they are advised thereof in writing (otherwise than upon any of the Company's documents) at the forwarding or delivering station or at the district or head office of the forwarding or delivering Company within three days and the claim be made in writing within seven days after the termination of the transit of the consignment or the part of the consignment in respect of which the claim arises.
- (b) for non-delivery of the whole of a consignment, or of a truck forming part of a consignment, unless they are advised of the non-delivery in writing (otherwise than upon any of the Company's documents) at the forwarding or delivering station or at the district or head office of the forwarding or delivering Company within 14 days and a claim be made in writing within 28 days after receipt of the consignment by the Company to whom the same was handed by the sender.

Provided that if in any particular case a Trader before action brought proves to the satisfaction of the Company or, where the Company are not so satisfied, of the Railway Rates Tribunal, that it was not reasonably possible for him to advise the Company in writing or to make his claim in writing within the aforesaid times, and that such advice or claim was given within a reasonable time, the Tribunal may, if having regard to all the circumstances they consider it equitable, declare that nothing in this Condition shall be a bar to the maintenance of proceedings against the Company.

#### CONDITION 6.

The transit shall (unless otherwise previously determined) be deemed to be at an end—

- (a) In the case of fuel consigned to a station or place on the railway system of a Railway Company of Great Britain at

the expiration of one clear day after notice of arrival is Appended given in writing (or by telephone if so agreed in writing) to or at the address of the consignee or, where the address of the consignee is not known, to or at the address of the sender, or where the addresses of both the sender and the consignee are not known at the expiration of one clear day after the arrival of the fuel at the place to which it is consigned.

(b) In the case of fuel to be carried to a siding not belonging to the Company—

(i) When it is delivered upon the siding or at the place where, by arrangement, the Trader takes delivery; or

(ii) If the consignee is unable through no fault of the Company, or is unwilling to take delivery, at the expiration of one clear day after the receipt by the consignee of notice in writing (or by telephone if so agreed in writing) that the Company are ready and willing to deliver; or

(iii) If the consignee is prevented from taking delivery through the act or omission of the Company when the cause which has prevented him from taking delivery has been removed and the fuel is delivered in accordance with paragraph (b) (i) or on the expiration of one clear day after receipt by the consignee of notice in writing (or by telephone if so agreed in writing) that the Company are ready and willing to deliver.

(c) In the case of fuel for shipment when the fuel has been placed in the storage sidings.

Provided that where in the usual course of business advice is given of arrival of fuel at reception sidings whence delivery is made to the station or place of destination such notice shall, whenever the fuel is held at such sidings for the convenience of the Trader, or the Company are unable to effect delivery through the default of the Trader, operate to suspend the transit until the causes of the suspension are removed and the Company are advised in writing by the Trader that delivery may be effected. In any such case a resumed transit shall be determined at the expiration of one clear day after arrival of the fuel at the station or place of destination.



Appendix.

## CONDITION 7.

After the termination of the transit, as defined by Condition 6 hereof, or where the transit is suspended by the default or for the convenience of the Trader, the Company will hold the fuel subject to the usual charges and upon the Condition that they shall not be liable for any loss, misdelivery, detention or damage unless occasioned by the neglect or default of the Company or their servants.

## CONDITION 8.

The Company's charges for carriage shall be payable by the owners of the sending colliery or works except in those cases in which the Company has notified the owners of the sending colliery or works of their willingness to debit the charges for carriage to the account of some other person.

## CONDITION 9.

Fuel delivered to the Company will be received and held by them subject (a) to a lien for moneys due to them for the carriage of and other proper charges or expenses upon or in connection with such fuel, and (b) to a general lien for any moneys or charges due to them from the owners of such fuel for any services rendered or accommodation provided in relation to the carriage or custody of merchandise, and in case any lien is not satisfied within a reasonable time from the date upon which the Company first gave notice of the exercise of their lien to the owners of the fuel, the fuel may be sold and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation thereto, and the Company shall account to the owners of the fuel for any surplus.

The general lien conferred by this Condition shall not prejudice an unpaid vendor's right of stoppage *in transitu*.

## CONDITION 10.

Where fuel—

- (a) is not removed or instructions are not given for its disposal within a reasonable time, or
- (b) is unclaimed and the names and addresses of the sender and consignee are not known and cannot be ascertained, or
- (c) is refused by the consignee, or not delivered because the consignee is not known, and in either case the sender fails to take delivery, or to give instructions for disposal,

the Company may sell the same and payment or tender of the proceeds of such sale, after deduction of all proper charges and expenses in relation thereto, shall (without prejudice to any claim or right which the sender or consignee may have against the Company otherwise arising under these Conditions) discharge the Company from all liability in respect of such fuel or the carriage or delivery thereof.

Provided that—

- (i) The Company shall do what is reasonable to obtain the value of the fuel.
- (ii) Where the fuel is not carried through to the destination to which it was consigned by the sender, the charges payable to the Company shall be those in operation for the journey actually completed, but shall not exceed the charges for the full transit.
- (iii) The power of sale shall not be exercised (a) where the name and address of the sender or the consignee is known unless the Company shall have sent notice in writing by post or otherwise to the sender or consignee that the fuel will be sold if not taken away within 14 days, or (b) where the names and addresses of the sender and consignee are not known unless the Company shall have published by advertisement in a newspaper circulating within the district where the fuel is held or from which it was sent, notice of their intention to hold such sale unless the fuel is taken away within 14 days after such publication.

CONDITION 11.

The Company shall not in any case be liable for—

- (a) loss of a particular market,
- (b) indirect or consequential damages, or
- (c) subject to these Conditions, loss, damage or delay proved by the Company to have been caused by or to have arisen from—
  - (i) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatever cause, whether partial or general; or
  - (ii) the consignee not taking or accepting delivery within a reasonable time.

**Appendix.****CONDITION 12.**

Fuel that loses weight through drainage, evaporation or any cause beyond the Company's control shall (unless otherwise agreed in writing) be charged upon the weight of the contents of the truck when received by the Company to whom it is handed by the sender.

**CONDITION 13.**

In the absence of written notice to the contrary given to the Company at the time of delivery to them, all fuel is warranted by the sender to be fit to be carried or stored in the condition in which it is handed to the Company.

**CONDITION 14.**

Fuel will be carried subject to any Conditions of Carriage included in the Conditions and Regulations in the Classification of Merchandise for Conveyance by Railway from time to time in force, and specifically applied to fuel.

**CONDITIONS 15—19.**

[The same as Form A Conditions 22, 23, 24, 25 and 27, substituting the word "fuel" for "merchandise"]

**CONDITION 20.**

In the computation of time, where the period provided by these Conditions is seven days or less, the following days shall not be included:—

In England and Wales—

Sunday, Good Friday, Christmas Day, or a Bank Holiday.

In Scotland—

Sunday, 1st and 2nd January, Spring Holiday, Autumn Holiday.

## INDEX.

[\*.\* The references are to the pages.]

### ACCEPTANCE,

within Sale of Goods Act, 1893...93.

*See* VENDOR AND VENDEE.

### ACCEPTANCE OF GOODS,

carrier's liability, 23—36.

*See* COMMON CARRIERS.

### ACCIDENT. *See* EMERGENCY.

### ACCIDENTS TO PASSENGERS. *See* PASSENGER, CARRIERS OF, BY RAILWAY AND ROAD, and NEGLIGENCE.

### ACCOMMODATION,

required to be granted by railway companies. *See* FACILITIES, DUE AND REASONABLE.

### ACT OF GOD,

carrier not liable for loss by, 37.

must be the proximate cause of loss, 39.

loss by, contributed to by negligence, 40, 43.

must be independent of human action, 40.

loss by lightning is the act of God, 44.

loss by floods, &c. may be, 39, 40.

### ACTION,

for refusing to carry, 5, 6, 24.

where goods sold are lost in transit, 96.

by carrier for injury to goods, 82.

by carrier for price of conveyance, 84.

by carrier for money paid on account of goods, 85.

who should bring, in case of goods being lost or injured, 96.

for delay in transit, 180, 181, 492 *et seq.*

for infringement of "equality" clause, 371.

for loss of luggage is not founded on contract, 444.

for personal injury in tort, 535.

**ADDRESS ON GOODS,**

- goods delivered to railway to be fully and legibly addressed, 124, 125.
- carrier's liability ceases on tendering goods for delivery at address given, 76.
- misdelivery through wrong address, 76, 77.
- condition as to non-liability unless luggage fully addressed is unreasonable, 454.
- company liable for passenger's luggage although not properly addressed, 460.
- want of, no excuse for loss of luggage, 460.

**ADJUSTMENT OF CHARGES TO REVENUE, 226 *et seq.*****AGENT,**

- delivery of goods to, a delivery to the carrier, 27, 28, 58, 129.
  - carrier is buyer's agent for receiving the goods, 92.
  - when carrier is seller's agent, 93.
  - for custody, 93, 94.
  - railway agent may be consignor's agent to sign contract, 141.
  - power to arrest, 130, 515, 582.
  - evidence as to whether parties to contract acted as, 131.
  - when railway company agents for another company under through booking, 170.
  - who are agents of railway company, 130, 131.
  - company bound by contract of, whom they put forward as having management of carrying business, 130.
  - station master agent for the company, to deliver goods, 188.
  - binds his principal when signing consignment note, 422.
  - passenger carriers liable for acts of their, and drivers, 528, 576.
  - company not liable for action of, outside his authority, 515.
- See* SERVANTS.

**AGREEMENT,**

- no reason for railway company refusing to give facilities, 327.

**ALLOWANCE FOR CARTAGE, 256. *See* CARTAGE.****ALTERNATIVE RATES, 149 *et seq.* *See* CONDITIONS.****ALTERNATIVE ROUTE. *See* THROUGH RATES.****ANIMALS, CARRIAGE OF, BY RAILWAY,**

- rates for, 222, 426.
- statutory obligation to carry, 416.
- limitation of liability for loss or injury to horses, sheep, neat cattle, and pigs, 419, 429.
- limitation of liability where carried by sea, 423.
- Board of Agriculture Regulations as to cleansing and disinfecting of horse-boxes, cattle-trucks, and overcrowding, &c., 424.
- provision of water and food for, on railway, 425.
- company insurers of animals carried, 426.

**ANIMALS, CARRIAGE OF, BY RAILWAY—continued.**

- how far company are liable as common carriers, 426 *et seq.*
- not liable for any act wholly attributable to latent inherent vice in the animal, 427.
- animals must be duly delivered to company to fix them with liability, 429.
- company bound to provide trucks reasonably sufficient for conveyance of cattle, 429.
- company bound to carry, in reasonable time, 430.
- injury to, owing to want of food, 432.
- duty to receive and deliver animals in a fit and proper place, 432.
- when responsibility of company terminates, 432.
- delivery to owner, 433.

**APPEAL,**

- from Railway Commissioners, 220.
- from Railway Rates Tribunal, 219.

**"APPOINTED DAY,"**

- meaning of term, 222.

**ARREST,**

- power of agent to, 130, 515, 532.

**AUTHORITY,**

- application to Railway Commissioners by harbour, 390.
- by public, 390.

**BAGGAGE. *Ses* LUGGAGE.**

**BANK-NOTES,**

- common carrier not liable under Carriers Act for loss, 49.

**BARGES,**

- liability of owners as common carriers, 17.

**BILLS OF EXCHANGE,**

- loss of, within Carriers Act, 49.

**BOARD OF AGRICULTURE,**

- may make orders as to removal, feeding, &c. of animals, 424.

**BOARD OF TRADE,**

- powers of, transferred to Ministry of Transport, 474, 481, 482, 513, 569.

**BOOKING OFFICE,**

- when carrier may be liable for goods left at, 27, 58.
- railway company not bound to provide, off railway, 112.

**BRACELET,**

- is a trinket within Carriers Act, 52.

**BREAK OF JOURNEY,**

- not allowed by ordinary ticket, 500.

**BYE-LAWS, RAILWAY,**

- as to conveyance of explosives, 116 *et seq.*
- as to luggage, 439.
- general power to make, 511.
- affecting public, must be sanctioned by Ministry of Transport, 513.
- to whom they apply, 513.
- allowance of, by Board of Trade, did not validate, 513.
- text of bye-laws affecting passengers and public, 514 *et seq.*
- See* PASSENGERS, CARRIERS OF, BY RAILWAY.

**CABMEN,**

- are not common carriers, 21.

**CABS,**

- admission into railway station, 412, 592.
- in metropolis, 588 *et seq.*
- outside the metropolis, 584 *et seq.*
- liability of railway company for luggage while being carried to and from, 448—451, 462.
- drivers of, in station-yards, 526.
- proprietors liable for accidents, 574, 588.
- privileged, abolished, 592.
- See* PASSENGERS, CARRIERS OF, BY ROAD.

**CAMPBELL'S, LORD, ACT, 537 *et seq.*****CANAL COMPANIES,**

- are common carriers if bound or profess to, or actually carry goods, 16.
- duty of, to afford all reasonable facilities for receiving and forwarding traffic, 312.

**CARRIAGES,**

- luggage in, 446.
- railway company liable for defects in, 165, 528.
- proper carriages must be supplied by road carriers, 575.

**CARRIER,**

- no absolute right to information as to contents or value of goods, 26.
- dangerous articles to be disclosed, 26.
- duty of, to inquire as to contents, 27.
- right waived, if no inquiry, 27.

**CARRIERS ACT, 1830,**

- origin of Act, 53.
- definition of "common carrier" in the Act, 54.
- articles within, 49—52.
- express declaration of contents of package necessary, 55.
- refusal to declare does not justify refusal to carry, 57.
- increased rate of charge to be notified, 57.

**CARRIERS ACT, 1830—continued.**

- when articles not within Act, no absolute right to know value or contents, 28.
- carrier's refusal to give receipt for goods and extra charge deprives him of protection of Act, 58.
- delivery at any "office, warehouse or receiving house," sufficient to render carrier liable, 58.
- Act does not affect special contract for conveyance of the goods, 59.
- special contract does not exclude benefit of Act unless terms of contract inconsistent with, 59.
- Act does not protect carrier from loss by felonious act of his servant, 60.
- carrier not liable for loss of articles within Act not declared, &c., 61.
- when he will be liable under such circumstances, 62.
- carrier protected, although loss or injury happens after goods negligently carried beyond their destination, 62.
- carrier protected from liability for the consequences resulting from a loss, 63.
- in action for loss increased charges paid are recoverable, 63.
- the declared value of the goods not conclusive evidence of value, 64.
- where one contract to carry by land and sea, carrier entitled to benefit of Act as to whole journey, 64, 455.
- railway company entitled to protection of, 137.
- passengers' luggage within, 452, 455.

**CARRIERS FOR HIRE NOT COMMON CARRIERS. See PRIVATE CARRIERS FOR HIRE.****CARRIERS OF GOODS,**

- who are not common carriers are liable as ordinary bailees, 45.

**CARRIERS OF PASSENGERS,**

- when common carriers, 13, 484, 485, 528 *et seq.*, 571.
- differ from common carriers of goods, 13, 484, 485.
- by railway, 13, 469 *et seq.*
- by road, 571 *et seq.*
- must supply proper carriages, drivers, &c., 575, 576.
- must avoid driving against foot passengers, 577.
- must receive usual luggage, 578.
- gratuitous, must use reasonable care, 1, 3.

*See PASSENGERS.*

**CARRIERS WITHOUT HIRE,**

- must use reasonable care, 1.
- meaning of "gross negligence," 1—4.
- are liable if they undertake to carry safely and perform duty improperly, 3, 5.
- liability where loss occasioned by theft, 4.
- contract of, *nudum pactum*, 5.



**CARTAGE,**

company not bound to arrange for conveyance of goods by road to stations, 119.

special order given by consignee as to, company bound by, 198 *et seq.*

company no right to impose charge for, where customer does not require such service, 202, 203.

rebate, 408.

**CATTLE. See ANIMALS.**

limitation of railway company's liability for, 419.

**CHARGES,**

increased rate, to be notified, 57.

who liable for, 84.

lien for. *See LIEN.*

need not be equal to all persons, 84.

for expenses incurred in preservation of property, 85.

how far illegal charges amount to refusal of facilities, 328, 329.

for warehousing goods. *See WAREHOUSEMEN.*

inequality of. *See UNDUE PREFERENCE.*

*See RAILWAY RATES AND CHARGES.*

**CHEAP TRAINS ACT, 1883,**

obligation to carry naval and military forces, 471.

run workmen's trains, 474.

exemption from passenger duty, 476.

**CHEQUES ON BANKERS.**

are within Carriers Act, 1830...49.

**CHINA,**

is within Carriers Act, 1830...49.

**CLASSIFICATION,**

of merchandise under Railways Act, 208, 210 *et seq.*

rates for articles not included in, 211.

**CLERKAGE,**

railway company may charge for, as special service, 288, 289.

**CLOAK ROOM,**

a reasonable facility, 203, 464.

luggage deposited at, 463.

conditions on tickets, 463 *et seq.*

sect. 7 of Traffic Act, 1854, does not apply to goods left at, 454.

liability of company for loss of goods left at, 463 *et seq.*

lien for cloak-room charges, 203, 464.

**CLOCKS,**

are within Carriers Act, 1830...49.

**CLOSETS,**

railway company need not provide free, 322.

**COAL DROPS,**

railway company may charge for use of, 297.

**COINS,**

are within Carriers Act, 1830...49.

**COLLECTION AND DELIVERY,**

rebate off, where service not performed, 408.

railway company cannot charge for, when not required, 202, 203.

**COMMON CARRIERS. *See also* GOODS, COMMON CARRIERS OF.**

definition of, 11.

the law is similar in Scotland, 11.

may be common carriers of one thing and not of another, 11, 14.

so called because professing to carry for everybody, 12.

are insurers of goods with certain limited exceptions, 12.

but not of passengers, 13.

above principles apply to carriers, statutory or otherwise, 13.

railway companies who profess to carry goods, luggage, &c. are, 13, 14, 107, 109.

tramway companies are, 15.

canal companies who carry goods are, 16.

owners, &c. of general ships carrying goods and luggage are, 18, 19.

bargeowners, &c. carrying goods for all for hire are, 17, 18.

carriers of passengers, when, 13, 484, 485, 528 *et seq.*

the fact of a special contract will not prevent railway company being, unless expressed, 14.

Postmaster-General, postmasters, &c. are not, 20.

cabmen are not, 21.

forwarding agents who collect for transmission are not, 21.

wharfingers who do not undertake to carry for all are not, 21.

transport contractors who stipulate for inspection of goods and fix special price are not, 22.

obligations with reference to receipt of goods, 23—36, 123.

when, may refuse to receive goods, 30.

right to be informed as to nature of goods, 26, 27, 55, 123, 125.

have an insurable interest in goods within the Carriers Act, 57.

are not concluded by declared value, 64.

may limit business to particular classes of goods, 23.

right to make special contracts, 28.

entitled to be paid in advance, 24.

responsible as soon as goods accepted, 27, 35.

**COMMON CARRIERS—continued.**

- must provide sufficient vehicle and stow properly, 30.
- are not bound to accept goods without necessary packing, 30.
- liability for imperfectly packed goods, 31.
- liability when warehouseman or forwarding agent, 35, 73.
- must follow instructions, 36, 72.
- obligations during transit, 37—48, 73.
- responsible for safety while retaining possession, 73, 74.
- are insurers, 37.
- may make special terms when not common carriers of particular goods, 67.
- where not their duty to deliver goods, are bound to give notice of arrival, 77.
- obligations with reference to delivery to consignee, 72—79.
- place of delivery, 72, 73, 75.
- time of delivery, 74, 75.
- if consignee is to fetch the goods, 77.
- if they deviate from professed route, are liable for loss, 72.
- where no special contract with consignor, may deliver where consignee agrees, 73.
- rights and remedies of, 82—91.
- having acquired lawful possession of goods, have special property in them, 82.
- may maintain action against person who takes or injures goods, 82.
- may insure, 83.
- before paying compensation, should ascertain with whom they actually contracted, 97.
- lien, 86—91. *See* LIEN.
- by mistake, goods delivered to wrong person, action lies for compensation paid to consignee, 80.
- trover lies against, if goods delivered at wrong address, 80.
- liability for failure to deliver, 81.
- railway company not to prefer themselves to other, 408.
- of animals, 426 *et seq.*
- of passengers' luggage, 436, 446.

**COMMUNICATION WITH GUARD OF TRAIN, 481.****COMPENSATION,**

- for loss or damage, to whom payable, 97.
- right of buyer or seller depends on terms of contract, 97.

**COMPETING ROUTE,**

- facilities on, 341.
- in public interest, 358.

**COMPETITION,**

- justifying a preference in rates, 398 *et seq.*

## CONDITIONS,

- railway company may make special contract containing, 136, 139.
- must be just and reasonable, 139.
  - in writing, 139.
- as to sea traffic, 162.
- onus of proving reasonableness of, on railway company, 141.
- what are reasonable, 143 *et seq.*
- what are unreasonable, 147 *et seq.*
- as to alternative rates, 149.
- reasonableness of conditions a question for judge, 149.
- presumption that consignor understands, 159.
- as to limitation of liability in consideration of reduction of rate, 149.
- as to non-liability for transit off company's own line, 169 *et seq.*, 457.
- as to carriage of animals, 416, 418.
- as to address on personal luggage, 454.
- on cloak-room tickets, 463.
- on passengers' railway tickets, 489.
- as to passenger travelling at his own risk, 540.

## CONSIGNEE OF GOODS,

- bring insolvent, right of consignor to stop goods, 99, 100.
- notice of arrival of goods to, 74, 77, 192.
- duty of consignee thereupon, 193.
- when, cannot be found, 80, 193.
- tender of delivery at house of, 75, 76.
- refusing goods, duty of carrier, 79, 80, 194.
- delivery to wrong, 81.
- special orders of consignee as to delivery, 198 *et seq.*
- to examine and see if goods in good order, 192.
- refusal by, to pay the carriage, 204, 205.
- making default in receiving goods, carrier can recover expenses incurred, 194.
- when liable to pay the carriage, 84.
- injured while helping to take delivery of goods, 191.

## CONSIGNOR OF GOODS,

- must use no artifice to increase risk, 32.
- delivering dangerous goods, without notice, indemnifies carrier, 32.
- primarily liable to pay the carrier, 84.
- bound by his declaration as to value of goods, 64, 128, 422.
- countermanding directions as to destination or delivery, 36, 73.
- duty of carrier to, when consignee refuses goods, 79, 80.
- should inform railway company if special care required, 113.
- to give exact account of goods to railway company, 125.
- presumption that he understands special conditions, 159.
- bound by ordinary traffic arrangements, 181.
- special instructions of consignor as to delivery, 190.
- notice to, if consignee cannot be found, or if he refuses to accept, 193.
- See* ADDRESS ON GOODS; FRAUD; LIEN; OWNER OF GOODS.

**CONTINUOUS ROUTE,**

obligation to forward traffic by, 338 *et seq.*

**CONTRACT OF CARRIAGE,**

how made, 27.

acceptance by the carrier, 27.

in cases not within sect. 7 of the Railway and Canal Traffic Act, 1854...28.

**CONTRIBUTORY NEGLIGENCE, 558 *et seq.***

carrier not liable for loss caused by intervention of owner or his agent, 43.

*scous* where he expressly undertook for safety of goods, 43.

**CONVERSION,**

of goods by carrier, 48, 76.

**CONVEYANCE,**

standard charges for, 221.

meaning of, 301.

**CONVEYANCE OF MAILS ACT, 1838...307.****CONVEYANCE OF MAILS ACT, 1893 ..308.****CORRESPONDENCE OF TRAINS. 341, 492.****COUNTERMAND,**

owner may countermand order as to delivery, 72, 189.

**COVERING AND UNCOVERING,**

company may charge for, 297.

**CREDIT,**

inconsistent with lien, 88.

company giving, 375.

refusing ledger account, not an undue preference, 375.

**DAMAGES,**

for failure to deliver goods, 81.

in what events exceptional, 81.

recoverable by action if "equality clause" infringed, 371.

power of Railway Commissioners to award, 392 *et seq.*

in cases of undue preference, 392 *et seq.*

Statute of Limitations applies, 396.

for loss of article deposited in cloak-room, 468.

**DAMAGES, MEASURE OF,**

for delay in carrying and delivery, 181.

for loss of profits through delay in delivery, 181.

for loss of market value by delay, 180.

failure to deliver, value estimated at destination, 183.

where no market at the destination, 183.

**DAMAGES, MEASURE OF—continued.**

- for special loss, 181.
- consignor bound by his declared value of goods, 64, 128, 422.
- in cases of undue preference, 396, 397.
- for delay of a passenger through unpunctuality of train, 492 *et seq.*, 501.
- for loss of articles when passenger ordered to leave train, 516.
- for personal injuries to passengers, 567 *et seq.*

**DANGEROUS GOODS,**

- person sending, bound to inform carrier of the nature of, 26, 113.
- company not bound to carry, 113.
- penalty for sending, without notice, 113.
- right to open parcels suspected to contain, 27, 114.
- railway companies' bye-laws as to, 116 *et seq.*, 524.
- in railway carriage, 524.

**DECAY,**

- natural. of goods, carrier not liable for, 42.
  - precautions to be used to lessen, 46.
- See* PERISHABLE GOODS.

**DECLARATION,**

- under Carriers Act, 55—58.
- refusal to declare, 57.
- if no declaration carrier not liable for loss of goods within Act, 61.
- of value of animals under sect. 7 of Traffic Act, 1854...419.
- owner bound by declaration of value, 64, 128, 422.

**DEEDS,**

- are within Carriers Act, 1830...49.

**DELAY,**

- in delivering goods, liability for, 74, 181.
- liability of carrier for loss caused by, 180 *et seq.*
- damages for, 180 *et seq.*
- of passenger train, liability for, 492 *et seq.*, 501.

**DELIVERY,**

- of goods to carrier. 21—36.
  - what is sufficient delivery, 27—29.
  - under Carriers Act, 58.
- of animals to railway company, 429.
- of goods by carrier, 72, 73, 74.
  - at house of consignee, 75.
  - to wrong person, 76, 81.
  - what is sufficient delivery, 75, 76.
  - damages on failure of, 81.
- to carrier is delivery to buyer, 92.
- place of, 92.
- at seller's risk, 98.

**DELIVERY—continued.**

- railway company must deliver within reasonable time, 180.
- no implied contract to deliver punctually, 180.
- damages for delay in delivery, 181.
- station-master agent for railway company, 188.
- owner may countermand order as to, 189.
- special instructions as to, 198 *et seq.*
- railway company cannot charge for delivery when not required, 202, 208.
- at private siding, 329 *et seq.*
- charges for delivery of traffic at private siding, 333.
- of animals, 432.
- of passengers' luggage, 461.

**DEMURRAGE,**

- meaning of, as applied to trucks, 275.
- of trader's trucks, 275.

**DETENTION,**

- meaning of, 151, 434.
- of trader's trucks by company, 274.
- of trucks by trader, 292.

**DETERIORATION. See DECAY and PERISHABLE GOODS.****DEVIATION,**

- common carrier to proceed without, 72.

**DISEASES OF ANIMALS ACT, 1894...424, 425.****DISTRICTS,**

- undue preference of different, 413.

**DOGS,**

- conditions as to, 148.
- company bound to carry, 416.
- within sect. 7 of Traffic Act, 1854...422.
- percentage on excess value of, 420, 421.
- when allowed to accompany passengers, 439, 524.

**DUTY OF COMMON CARRIER,**

- to receive goods, &c., 23, 25.
- he may limit his business, 23, 25.
- when refusal to carry reasonable, 23.
- for neglect of, may be indicted, 23, 24.
- an action lies, 25.
- may be avoided if payment in advance refused, 24.
- liability limited by Carriers Act, 1830...49.
- to check loss and deterioration, 31, 46.

**EMERGENCY,**

- in case of, or accident to goods, carrier should get instructions from owner, 47.
- do what is necessary for safety of goods, 47.
- may charge expenses to owner, 47.
- when carrier by land may sell goods, 47.
- See* PERISHABLE GOODS.

**EMPTY PACKAGES,**

- company not gratuitous bailees of returned empties, 174, 175.
- condition as to loss of, held unreasonable, 147, 175.
- rates for, 211, 280.

**EMPTY TRUCKS,**

- no charge for return of, 280.

**ENGRAVINGS,**

- are within Carriers Act, 1830...49.

**"EQUALITY CLAUSE," 366 *et seq.***

- evidence of infringement, 366, 376.
- only applicable to traffic between same points, 368.
- action lies for recovery of overpayments, 368.
- application even though company are not bound to carry, 370.

**EQUALITY OF CHARGE. *See* UNDUE PREFERENCE.**

**EQUALITY OF TREATMENT. *See* UNDUE PREFERENCE.**

**ESTOPPEL,**

- carrier not estopped from disputing consignor's title, 80.
- railway company estopped from setting up illegality of action, 177.

**EVIDENCE,**

- to justify an increase of rates, 246.
- in application for facilities, 325, 326.
- in action for infringement of equality clause, 366, 376.
- of negligence, 165, 177, 429, 555—566, 576.
- contributory, 558 *et seq.*

**EXPLOSIVES,**

- company not bound to carry, 118.
- bound to make bye-laws as to, 116.
- text of bye-laws as to, 116 *et seq.*, 524, 525.
- with troops, 473.
- in railway carriage, 524, 525.

**EYE-GLASS,**

- not a trinket within Carriers Act, 52.



**FACILITIES, DUE AND REASONABLE,**

- obligation on railway company to give, 110, 312 *et seq.*, 317, 469.
  - for carriage of mails, 307.
  - when railroad taken over by Government, 317.
  - Railway Commissioners have sole jurisdiction to order, 323.
  - Railway Commissioners may order minor alterations and extensions, 317, 318.
  - cases as to the provision of station accommodation, 321.
  - Railway Commissioners to hear complaints as to contravention of special Act, 323.
  - agreement no reason for refusal to give, 327.
  - to obtain order for, from Commissioners must prove public inconvenience, 325 *et seq.*
  - meaning of, 325.
  - what must be proved, 325.
  - Commissioners may enforce provisions relating to traffic facilities in special Act, 323.
  - withdrawal of, 327.
  - Commissioners may deal with overcharges in certain cases, 328, 329.
  - overcharges preventing use of certain trains may amount to denial of reasonable facilities, 328.
  - Commissioners cannot order company to make a new railway station, 319.
  - Commissioners' jurisdiction as to platforms, booking offices, and other structures at any station, 317 *et seq.*
  - cloak-room a facility, 206, 464.
  - when Commissioners will order trains to be run, 320.
  - company not bound to provide facilities for traffic at places off the railway, 322.
  - Commissioners' jurisdiction as to private siding connections, 329 *et seq.*
  - as to provision of wagons, 334.
  - trader not entitled to have ordinary merchandise carried in his own wagons, 336.
  - forwarding of traffic--through services, 338.
  - obligation to facilitate transmission of traffic to other lines, 338.
  - applications by members of the public, 339.
  - by competing routes, 341, 391.
  - correspondence of trains, 341.
  - applications by railway and shipping companies, 341.
  - arrangements in force on 1st August, 1914, to be continued, 343.
  - no power to refuse to carry because of local alternative route, 345.
  - when route becomes "a continuous line of railway communication," 345.
  - for carriage of animals, 416.
- See THROUGH RATES.*

**FARES, CAB AND OMNIBUS, 587.**

- fixed by taximeter, 593, 594.

**FARES, RAILWAY. *See* PASSENGERS, CARRIERS OF, BY RAILWAY.**

**FARES, TRAMWAY,**

workmen's fares, 583.

ordinary fares, 583, 584.

**FEAR AND RESTIVENESS,**

meaning of, in special condition, 152.

**FELONIOUS ACT,**

of servant, carrier's liability for, 60.

**FERRYMEN,**

when common carriers, 81.

**FIFTH SCHEDULE OF THE RAILWAYS ACT, 1921. *See* RATES AND CHARGES.**

**FIRE,**

loss by lightning an act of God, 44.

loss or damage by, after acceptance and before conveyance, 35.

loss by, after conveyance and before delivery, 77.

accidental, carrier liable for loss by, 44.

liability of railway company under Railway Fires Act, 1905...552.

**FLOOD,**

loss by, may be act of God, 39, 40.

**FOREIGN COINS (GOLD AND SILVER),**

are within Carriers Act, 1830...50.

**FOREIGN COUNTRY,**

liability of railway company carrying to, 108.

**FOREIGN MERCHANDISE,**

not to be preferred, 378 *et seq.*, 383.

**FORWARDING AGENT,**

liability of carrier when, 35.

**FORWARDING TRAFFIC. *See* FACILITIES, DUE AND REASONABLE.**

**FRACTIONS,**

calculation of, under Railway Act, 1921, Sched. 5...305.

**FRAGILE GOODS,**

extent of liability for, 30, 31, 32, 46.

railway company not bound to carry, except under special contract, 146.

**FRAUD,**

carrier designedly delivering materials to be wrought to workmen other than intended, 81.

persons sending goods bound not to fraudulently conceal their value, 31, 32, 126, 128.

**FRAUD—continued.**

penalty for giving false account under Railways Clauses Act, 1845...126.  
 where no goods within Carriers Act no disclosure is necessary, unless inquiry is made, 26.

if possession of goods fraudulently obtained from carrier, his lien revives if possession recovered, 89.

carrier fraudulently taking or converting goods to his own use, 48.

passenger travelling with intent to avoid payment of fare, 507.

**FREE PASS,**

liability of company to passenger with, 530, 541 *et seq.*

**FURNITURE, REMOVER OF,**

not liable as common carrier, 22.

**FURS,**

are within Carriers Act, 1830...50.

**GENERAL LIEN. See LIEN.****GLASS,**

is within Carriers Act, 1830...50.

**GOLD (MANUFACTURED OR UNMANUFACTURED, PLATE OR PLATED),**

is within Carriers Act, 1830...50.

**GOLD COIN,**

is within Carriers Act, 1830...50.

**GOODS, CARRIAGE OF, BY RAILWAY,**

railway company liable as common carriers, 13, 107 *et seq.*

**I. Delivery to railway company,**

obligation on company to carry, 107.

customer's right to send goods over railways at a single booking and for a single payment, 110.

company not bound to carry damageable goods not properly packed, 112, 135.

goods of a dangerous nature, 113.

bye-laws regulating conveyance of gunpowder or other explosives, 116.

warranty that goods are safe to carry, 122.

company bound to receive packed parcels, 123.

goods ought to be legibly addressed, 124.

dangerous nature of goods must be communicated to company, 125.

company entitled to be paid proper charges before they accept goods, 128.

company must provide suitable premises for receiving goods, 128.

**GOODS, CARRIAGE OF, BY RAILWAY—continued.**

**I. Delivery to railway company—continued.**

company must have duly authorised servants to receive goods, 129.  
what is a sufficient delivery to company to make them responsible as carriers, 129, 130.

**II. Contract of carriage by railway,**

standard conditions of carriage to be settled by Railway Rates Tribunal, 132 *et seq.*

standard conditions, form of, as settled—

- A. For carriage of merchandise at companies' risk rates, 597.
- B. For carriage of merchandise at owners' risk rates, 608.
- C. For carriage of live stock at companies' risk rates, 611.
- D. For carriage of live stock at owners' risk rates, 619.
- E. For carriage of damageable goods at companies' risk rates, 621.
- F. For carriage of coal, coke and patent fuel, 624.

conditions of carriage to be company's risk conditions in absence of special contract, 134.

notice cannot relieve company from liability for negligence, 136 *et seq.*

even though goods carried in special manner, 158.

notice can relieve company from liability for theft, 137.

special contract within sect. 7 of the Traffic Act, 1854...139 *et seq.*

conditions held reasonable, 143.

conditions held unreasonable, 147.

decisions as to reasonableness of alternative rates, 149.

wilful misconduct, definition of, 154.

burden of proof on trader, 154.

sect. 7 of the Traffic Act, 1854, only applies to contracts of carriage over railways worked by contracting company, 157..

sender of goods filling up and signing form presumed to understand conditions, 159.

contract of company to carry by sea, 160.

company entitled to limitations of liability imposed by Merchant Shipping Act, 163.

**III. Obligations during transit,**

not bound to carry by shortest route, 165.

duty to provide proper carriages and effective covering, 165.

protection by conditions lost on departure from agreed route, 167.

duty to avoid perils, 168.

implied undertaking to deliver safe, even beyond own line, 169.

company receiving goods from another company, when liable for loss or damage, 170.

undertaking when hauling trucks, 174.

not gratuitous bailees of empty packages, 174, 175.

transit interrupted, when company may sell as agents of necessity, 175.

**GOODS, CARRIAGE OF, BY RAILWAY—continued.****III. *Obligations during transit*—continued.**

- obligation to carry safely apart from contract, 176.
- company estopped from setting up own illegal acts, 177.
- when transit deemed to be ended, 178, 179.

**IV. *Obligations as to delivery*,**

- must deliver within a reasonable time, 180.
- no implied contract to deliver with punctuality, 180.
- contract to carry by particular train no warranty that it will arrive at time it ordinarily does, 180.
- measure of damages for delay, 181 *et seq.*
- damages for loss of profit, 181.
- "non-delivery of any consignment," meaning of, 188.
- station-master agent of company to deliver goods, 188.
- owner of goods may alter destination of goods during transit, 189 *et seq.*
- company may assume consignee the owner, 189.
- consignee taking delivery in particular way, liability of company for injury, 191.
- consignee should examine goods on receipt, 192.
- when duty of company to give notice of arrival of goods to consignee, 192.
- consignee's duty to remove goods on receiving such notice, 192.
- duty of railway company where consignee refuses to accept, 193.
- or cannot be found, 193.
- company bound to keep goods reasonable time for consignee to claim them, 194.
- company during such time liable as insurers, 194.
- company after such time are mere bailees of the goods for hire, 194.
- company entitled to recover expenses reasonably incurred in taking care of goods, 194.
- when company only liable as warehousemen, 194 *et seq.*
- duty of company when special order given as to delivery, 198.
- powers of company to collect and deliver by road, 201 *et seq.*
- particular lien of company, 203.
- general lien of company, by special contract, 203.
- power of company if toll unpaid, 204.
- vendor's right of stoppage subject to lien, 204.
- when company can sell goods detained, 205.
- company's lien for cloak-room charges, 464.

**GOODS, COMMON CARRIERS OF,****I. *The receiving of goods*,**

- duty of, to receive goods, 23.
- indictment will lie for refusing to carry goods without reasonable excuse, 23.
- may limit business to carriage of particular classes of merchandise, 23, 25.
- entitled to be paid hire before receiving goods, 24.

**GOODS, COMMON CARRIERS OF—continued.****I. *The receiving of goods—continued.***

- the sum demanded must be reasonable, 24.
- carrier may be sued if he refuses goods, 24.
- bound by representations made at their office by clerks or servants, 25.
- as a general rule, not entitled to know contents of package, 26.
- consignor of an article of dangerous nature bound to communicate the same to, 26, 27.
- goods ought to be fully and legibly addressed, 124.
- consignor must make use of no fraud or artifice to deceive, 32.
- goods must be delivered to carrier himself or his agent, 29.
- what is sufficient delivery of goods to render carrier liable, 28, 29.
- responsibility of, fixed by acceptance of goods, 27, 28.
- carrying goods under special agreement excluding common law contract, 28.
- need not carry articles without the necessary packing, 30.
- receive goods until ready to set out on journey, 30.
- where, act as warehousemen and their liability as such, 35.
- bound to follow instructions of owner of goods where reasonably practicable, 36.

**II. *Obligations during transit.***

- liable in case of loss of, or injury to, the goods, 37.
  - not, if caused by act of God, 37.
    - by King's enemies, 37, 40.
      - unless conducted by negligence, 43, 45.
    - by contributory negligence on part of bailor, 45.
    - by inherent vice in or natural deterioration of the thing carried, 31, 41.
  - in case of emergency or special danger, 46, 47.
  - responsible for damage or loss by fire, 44.
    - loss occasioned by robbers or mobs, 44.
    - injury occasioned by negligent act of third person, 45.
  - one entire contract by sea and land, the benefit of the Carriers Act covers the whole journey, 54, 64.
  - not responsible where loss caused by intervention of owner of goods, 45.
  - duty to carry safely independent of any contract, 45.
  - onus probandi* on, to exempt themselves for loss or injury to goods, 45, 70.
  - not responsible for losses which arise from ordinary wear and tear and chafing of goods, 50.
    - nor from ordinary loss, deterioration in quantity or quality, 42.
      - inherent natural infirmity or tendency to damage, 41, 42.
    - nor which arise from the negligence or fraud of the owner or consignor thereof, 31, 32.

GOODS, COMMON CARRIERS OF—*continued*.II. *Obligations during transit*—*continued*.

duty of carrier as to defect in packing and arrest of deterioration, 31.

responsible where deterioration caused by default of, 42.

when responsible for damage accruing to goods from improper packing by sender, 30, 42.

responsibility as to sale of perishable goods, 47.

bound to take reasonable care of goods injured by cause for which not responsible, 46.

responsibility for fraudulently converting goods to their own use, 48.

limitation of responsibility by the Carriers Act, 1830...49.

cannot limit liability by public notice or declaration, for goods not within Carriers Act, 64.

can limit liability by making special contract with customer, 66.

may prescribe their own terms of conveyance for goods they are not common carriers of, 67.

special contract does not exclude benefit of Carriers Act, unless its terms are inconsistent therewith, 59.

III. *The delivery of goods*,

implied undertaking to deliver without deviation and in the ordinary course, or according to terms of contract, 72.

must use reasonable diligence, 72.

owner of goods may alter place of delivery, 73.

demand back goods on payment of carriage, 73.

may deliver goods wherever they and consignee agree, if no special contract between them and consignor as to place of delivery, 73.

may be justified in warehousing, although instructions are to deliver ex ship to railway, 73.

are responsible for safety while retaining possession or control, 73, 74.

may incur delay, where necessary for safety, 74.

duty to see goods delivered at place to which directed although beyond the place to which they profess to carry, 76.

when their responsibility in that character comes to an end, 76.

bound to deliver within a reasonable time in the absence of special contract, 74.

bound to give notice to consignee of arrival of goods, 77.

when bound to deliver at consignee's residence, 75, 76.

when so tendered, still bound to use reasonable care, 76.

what is sufficient delivery, 73.

to wrong person, 76, 77.

loss will fall on buyer, if delivered to respectable person at address given, 77.

if unable to find consignee should retain goods, 80.

when goods to be deposited in warehouse at destination, 78.

**GOODS, COMMON CARRIERS OF—continued.**

**III. *The delivery of goods—continued.***

carrier's duty and liability if goods refused by consignee, 79.  
are liable where delivery is to a person not entitled to receive, 76.  
bound to keep goods reasonable time for consignee to claim in, 77.  
where consignee refuses goods, carrier bound to do what, under the circumstances, is reasonable, 79.  
liability as warehousemen, 78.

**IV. *Rights and remedies of,***

have special property in goods delivered to them for conveyance, 82.  
if carriage of goods dispensed with, need not restore to owner until paid due remuneration, 82.  
may maintain action against person injuring goods, 82.  
have insurable interest in the goods, 83.  
entitled to reasonable amount for the conveyance of goods, 84.  
not bound to charge all persons equally, 84.  
entitled to make higher reasonable charge for conveyance of valuable goods, 84.  
who is liable to pay for the conveyance, 84.  
recovery of money paid on account of goods, 85.  
lien of. *See* LIEN and LIMITATION OF LIABILITY.

**GRATUITOUS,**

bailment, 1.  
passenger, rights of, 530, 541.

**GRATUITOUS CARRIER. *See* CARRIERS WITHOUT HIRE.**

**GROSS NEGLIGENCE,**

what is, 1, 3.  
carriers without hire, liable for, 1, 595.  
not liable for unsecured goods within Carriers Act lost by, 61.  
liability where special contract inconsistent with exemption under sect. 1 of Act, 59, 66.

**GROUP RATES, 386 *et seq.***

**GUNPOWDER,**

carrying by railway, 113 *et seq.*  
with troops, 473.  
*See* EXPLOSIVES.

**HACKNEY CARRIAGES,**

statutory regulations as to, outside Metropolis, 584 *et seq.*  
in Metropolis, 583 *et seq.*  
licensing authority outside Metropolis, 584.



**HACKNEY CARRIAGES**—*continued*.

omnibuses are, for certain purposes, 584.

trams are not, 585.

motor charabancs are not, for certain purposes, 585.

cabs on light railway are not, 585.

driver bound to drive within prescribed distance, 586, 591.

local authority has power to make bye-laws as to fares, 587.

registered proprietor liable for acts of driver, 588.

Commissioner of Metropolitan Police the licensing authority in Metropolis,  
588.

not entitled to lay down general rule  
as to cabs on hire-purchase agree-  
ments, 589.

penalty for unlicensed cab plying for hire, 589.

when deemed to be plying for hire, 590.

admission of cabs to railway stations, 412, 592.

obligation to carry luggage, 592.

charges for carrying luggage, 593.

charges for carriage of passengers, 593, 594.

refusal to carry, penalty for, 594.

list of fares to be exhibited, 594.

*See* CABS.

**HACKNEY COACHMAN,**

liability of, as common carrier, 21.

injury to passenger by negligence in driving, &c., 575 *et seq.*

*See* PASSENGERS, CARRIERS OF, BY ROAD.

**HIRE,**

must be reasonable, 84.

carrier may waive right to recover damages from person primarily liable,  
85.

recovery of expenses for preservation of goods, 85.

**HORSES,**

limited liability of railway company for loss of, 419 *et seq.*

damage from "proper vice," 427.

defective horse-box, 429, 430.

regulations as to horse-boxes, 424.

recovery of livery charges for, 433, 434.

delivery by railway company, 434.

**INCREASE OF RATES, 226—230, 236, 237.**

adjustment of charges to revenue, 226 *et seq.*

review of standard charges at end of each financial year, 228.

application for modification of standard charges, 236.

**INDIVIDUAL,**

meaning of, within sect. 9 of Traffic Act, 1888...326.

**INFANT,**

contract with railway company, 490, 491.

compensation for injuries, 548.

**" INHERENT VICE " OR DEFECT,**

meaning of, 41.

damage arising from, liability for, 42, 46, 427—429.

carrier liable for, if his negligence has contributed, 48.

**INSOLVENCY,**

of buyer, 99.

meaning of, 100.

**INSPECTION OF RAILWAY RATE BOOKS, 266, 269.**

rate books in operation 14th January, 1924, to be available for inspection, 271.

**INSURANCE,**

carrier has insurable interest in goods, though value not declared, 57.

carrier may insure property carried, 83.

not a ground for diminishing damages for personal injury, 569.

**INSURERS,**

common carriers of goods are, 37.

warehousemen are not, 35, 78, 79.

liability of carrier when goods in his possession at end of transit, 78.

of personal luggage, 436 *et seq.*

not of passengers, 528 *et seq.*

**INTERMEDIATE STATION,**

when fare to, exceeds fare to more distant station, 520.

room in train at, 519, 520.

**INVITATION TO ALIGHT, 560 *et seq.***

**JEWELLERY,**

is within Carriers Act, 1880...50.

**JUNCTION,**

with private siding, 329 *et seq.*

removal of same, 332, 333.

**KING'S ENEMIES,**

the meaning of, 40.

carrier not liable for loss by act of, 37, 40.

loss through, contributed to by negligence or want of skill of carrier, 48.

**LACE,**

is within Carriers Act, 1880...50.

**LAND,**

carrier by, may be one by land and also by water, 49, 54, 64.  
*See WATER.*

**LARCENY,**

by carrier, 48.

**LATENT DEFECTS,**

in vehicle, carrier responsible for, in case of goods, 165, 166.  
 not responsible for, in case of passengers, 528 *et seq.*, 575, 576.

**LEVEL CROSSING,**

liability of railway company for accident at, 546 *et seq.*

**LIEN,**

common carrier has particular lien on goods carried for price of carriage, 86.  
 when claim to a general lien can be supported, 86.  
 general lien subject to stoppage *in transitu*, 87.  
 conveyance under special contract does not deprive carrier of, unless contract inconsistent with, 87.  
 no lien when credit given, 88.  
 carrier cannot retain as against owner for balance due by consignee, 88.  
 carrier by delivering part of goods does not abandon his lien upon the rest, 88.  
 but, *semble*, otherwise if goods an entire machine, 89.  
 delivery to carrier for conveyance to buyer ends vendor's lien, 89.  
 does not authorize carrier to sell the goods, 89.  
 carrier not entitled to charge for warehousing goods during time he retains them, 90.  
 goods to be kept in a reasonable place for delivery, 90.  
 carrier may exercise general lien over goods on his land let to owner of goods, 90.  
 not necessarily defeated by carrier holding as warehouseman, 102.  
 exercise of, is not "detention" within special contract, 151, 431, 434.  
 of a railway company, 203 *et seq.*, 463.  
 on goods deposited in railway cloak-room, 464.  
 when company can sell goods detained, 205.  
 on passenger's luggage for fare, 578.

**LIMITATION OF LIABILITY,**

1. Under Carriers Act, 1830,

thirty-six classes of goods named in sect. 1...49—54.

bill of exchange, a document with no drawer is not a, 49.  
 glass includes looking-glasses and smelling bottles, &c., 50.  
 lace does not include machine made, 50.  
 maps include a set of maps, 50.  
 paintings must be of artistic value as such, 50.  
 picture with a frame is one article, 51.  
 meaning of "contained in a parcel," 53.

**LIMITATION OF LIABILITY—continued.**

**1. Under Carriers Act, 1830—continued.**

"loss" in sect. 1 means loss by the carrier, 54.

"common carrier" in Act includes one by land who is also by water, 54.

carrier is entitled to declaration of contents, 55.

consignor to make declaration where goods tendered, 55.

should specify contents and value of each parcel, 57.

refusal to make, no justification for carrier's refusal to carry, 57.

carrier's notice of increased charge to be large and legible, 57.

protection lost by carrier's refusal to give receipt, 58.

what a sufficient delivery, 58.

does not protect from felonious act of servants, 60.

carrier not liable for gross negligence where no declaration and no increased charge, 61.

though loss happens after goods negligently carried beyond destination, 62, 63.

plaintiff may recover increased charge as well as value, 63.

must prove value, 64.

where one entire contract by land and sea, protection of Act applies, 64.

carrier also entitled to that of Merchant Shipping Act, 64.

**2. By special contract or notice,**

inconsistent with the exemption under sect. 1...59, 66.

as to goods mentioned in the Act by public notice or declaration, 64.

by delivering ticket or notice to consignor, 65.

by Railway and Canal Traffic Act, 1854, companies may protect by special contract if conditions reasonable, 66.

Railway Rates Tribunal to settle rates for railway traffic, 66.

where carrier gives two different notices, the less beneficial to him will bind, 67.

has option of refusing, may prescribe terms, 67.

where carriage by railway or canal, signed contract is necessary, 67.

special contract exempting from liability applies only in carrying it out, 68.

words of, how construed, 69.

carrier, where loss follows breach of contract, must prove it did not cause loss, 70.

but where attention is called to the cause in the contract, he is excused, 70, 71.

**3. Under Merchant Shipping Act, 1894...163 *et seq.*, 536, 537.**

**4. Under Railway and Canal Traffic Act, 1854, in respect of live stock, 419 *et seq.***

**5. Under standard conditions of carriage in respect of live stock, 612.**

**LIVE STOCK. *See* ANIMALS.**

**LOADING AND UNLOADING,**

time to be allowed for unloading, 194 *et seq.*

charges for, 276, 297, 304.

**LOCOMOTIVE POWER,**

included in rate for conveyance, 300.

**LOSS,**

meaning of, in Carriers Act, 1830...54.

extent of protection given by Carriers Act, 63.

**LUGGAGE,**

in tramways and omnibuses, 15, 16.

in cabs, &c., 21, 578, 592, 593.

**LUGGAGE OF RAILWAY PASSENGERS,**

conditions as to carriage of luggage at sea, 163, 164.

obligation on company to convey, 436.

not liable for merchandise delivered as luggage, 441.

company common carriers and insurers of, 436, 443, 446.

not liable for loss or injury to which act or default of passenger has been contributory, 446.

bye-law exempting company from responsibility for loss of, void, 439.

no charge for carriage of, 436, 452.

weight allowed generally, 437.

what is personal luggage, 437, 440.

of passenger by excursion train, 444.

liability for other goods packed as, 441.

company may waive their rights as to amount and nature of luggage, 443.

luggage by excursion trains, 443.

master sending his luggage by his servant, 445.

liability for servants' luggage when ticket taken by master, 445 *et seq.*

liability in tort, 445.

placed in same carriage with passenger, 436, 446.

under passenger's control, 447.

commencement of liability for, 448.

where left with a porter for custody, 451.

notice as to free allowance of, meaning, 452.

within Carriers Act, 452, 455.

within sect. 7 of Traffic Act, 1854...453.

liability attaches, though luggage not addressed, 454, 455, 460.

liability for, during sea transit, 455.

liability where company carry beyond their own railway, 457.

contracting company liable unless luggage handed to another company, 457.

carrying company liable for loss, &c. of luggage carried, 458.

owner need not look after, at junction, 460.

duty of company on arrival of passenger at destination, 461.

duty of company to convey luggage to cabs, 462.

**LUGGAGE OF RAILWAY PASSENGERS—continued.**

- termination of liability for, 462.
- carrier has lien for fare, 463.
- liability for, deposited in cloak-room, 463 *et seq.*

**MAILS,**

- obligation on company to convey, 307.
- See* POST OFFICE.

**MAPS,**

- are within Carriers Act, 1830...50.

**MARKET, LOSS OF, 143, 144, 180 *et seq.*****MERCHANDISE,**

- classification of, by Railway Rates Tribunal, 210 *et seq.*
- amendments of classification, 210 *et seq.*

**MERCHANT SHIPPING ACT, 1894,**

- shipowner's lien for freight, how retained, 89.
- limitation of shipowner's liability, 163 *et seq.*, 536, 537.

**MILESTONES,**

- to be placed along railway lines, 271.

**MISCONDUCT. *See* WILFUL MISCONDUCT.****MISTAKE,**

- goods delivered to wrong person, indemnity for carrier, 80.

**MONEY (GOLD OR SILVER),**

- is within Carriers Act, 1830...50.

**MUNICIPAL AUTHORITY,**

- when acting as carriers entitled to protection of Public Authorities Protection Act, 554.

**NEGLECT OR DEFAULT,**

- meaning of, within sect. 7 of Traffic Act, 1854...137 *et seq.*

**NEGLIGENCE,**

- gross negligence, what is, 1—4.
  - when carrier not liable for, 61.
- ordinary negligence, what is, 2, 3, 8, 9.
- presumption of, 45.
- on the part of third party, 45.
- railway company cannot generally except, 148.
- railway company liable for loss due to excepted peril if occasioned by negligence, 168.
- no liability to trespassers for, 549 *et seq.*
- at level crossings, 546 *et seq.*

**NEGLIGENCE—continued.**

of railway company at stations, 551.

when exercising statutory powers, 552 *et seq.*

evidence of, 155, 429, 430, 555 *et seq.*, 573 *et seq.*

question for jury, 556.

injury must be direct consequence of, 556.

functions of judge and jury in deciding question of, 556.

of carriers of passengers by road, 573 *et seq.*

*See* PRESUMPTION and CONTRIBUTORY NEGLIGENCE.

**NOTICES,**

what, are within Carriers Act, 1830 .50.

**NOTICE,**

public, ineffectual to limit carrier's liability, 64.

origin and history of, 53.

of increased charge under Carriers Act, 1830 . 57.

when there are two valid notices given, carrier bound by the one less beneficial to himself, 67.

when valid, 65, 66.

personal notice to consignor limiting carrier's liability, 63.

not applicable in case of railway and canal companies, 65, 66.

to consignee of arrival of goods, 77.

of sea transit, to be given to buyer, otherwise goods at seller's risk, 96.

of stoppage *in transitu*, 103—106.

general notice given by railway company limiting liability, 136, 137.

in general void, 139 *et seq.*

no notice of change of traffic arrangements necessary where no time-tables published, 180.

railway company should give notice of arrival of goods to consignee, 192.

to consignor if consignee cannot be found or if he refuses to accept, 193.

of proposal for through rates, 347 *et seq.*

what is sufficient, of rebate off rate, 395.

in time-table that certain luggage may be carried on conditions in operation, 443.

as to free allowance of luggage, meaning of, 452.

of conditions on ticket, 463 *et seq.*, 489 *et seq.*

**OMNIBUS,**

proprietor's liability for luggage of passengers, 16.

admission of, into railway station, 412, 413.

railway companies cannot carry on business as proprietors of, 485.

statutory regulations as to, 579 *et seq.*

must bear name of proprietor and number of passengers constructed to carry, 580.

regulations as to carriage of luggage in, 581.

is a hackney carriage within Town Police Clauses Act, 1847, ss. 37, 40—42, 54, 58, and 60—67...584.

*See* PASSENGERS, CARRIERS OF, BY ROAD.

**ONUS OF ENQUIRY,**

if no time-tables published, 131, 131.

**ONUS OF PROOF, 79, 71, 141, 154.**

as to damage to goods carried over more than one railway, 179, 179, 179,  
457 *et seq.*

when luggage lost, 457 *et seq.*

when passenger injured, 530, 555 *et seq.*

**OPENING PACKAGES,**

right of carriers as to, 120, 124.

**ORDERS FOR PAYMENT OF MONEY,**

are within Carriers Act, 1830...50.

**OVERCHARGES,**

for conveyance of goods recoverable, 261, 368.

for conveyance of passengers, when recoverable, 261, 328, 329.

whether amount to refusal of facilities, 328, 329.

**OVERCROWDING,**

obligation of company in respect of, 487 *et seq.*

of animals in railway trucks, 424 *et seq.*

bye-law as to, 522.

at stations, 564 *et seq.*

**OWNER OF GOODS,**

directions of, to be obeyed during transit, 36.

countermanding directions as to delivery, 72, 189.

assuming care and custody of the goods himself, 9, 10, 43, 446 *et seq.*

accompanying goods during transit, 9, 10, 43.

*See* CONSIGNOR *and* CONSIGNEE.

**OWNER'S RISK,**

meaning of stipulation when goods carried at, 155..

decisions as to, 149 *et seq.*

passengers' luggage carried at, 444.

goods held by railway company as warehousemen at, 79, 195.

standard conditions for carriage of goods, &c. at owner's risk, 608, 619.

**PACKED PARCELS,**

company bound to carry, 123.

chargeable at ordinary rate, 123.

not justified in opening package, 123.

to be charged for equally to all persons, 411, 412.

**PACKING,**

refusal to carry where packing defective, 112, 113.

loss from improper, 31.

standard terms and conditions for carriage of goods improperly packed,  
621.



**PAINTINGS,**

are within Carriers Act, 1830...50.

**PARCELS,**

carrier no absolute right to be told contents and value of, 26.

entitled under Carriers Act to know contents, 55.

contents and value of each parcel should be specified, 57.

railway company must carry packed, 123.

rates for, when articles sent in aggregate quantities, 305.

*See* PACKED PARCELS.

**PARTICULAR GOODS,**

where not a carrier of, may refuse or make special terms, 67.

**PARTICULARS OF CHARGES,**

for goods, company bound to furnish, 263.

**PASSENGER DUTY,**

exemption from, 476 *et seq.*

**PASSENGER TRAIN,**

what is a, 283.

conveyance of perishable goods by, 282, 283.

**PASSENGERS, CARRIERS OF,**

how far common carriers or insurers, 13, 484 *et seq.*, 528 *et seq.*

**PASSENGERS, CARRIERS OF, BY RAILWAY,****I. Generally,**

facilities for passenger traffic, 312 *et seq.*, 469, 470.

company when and to what extent common carriers of, 13, 14, 484 *et seq.*, 528 *et seq.*

obligation to carry passengers, 469, 484 *et seq.*

jurisdiction of Commissioners as to train and station accommodation, 312 *et seq.*

jurisdiction of Railway Rates Tribunal as to fares, 503, 504.

obligations as to through traffic, 313.

undue preference, 373 *et seq.*

obligation to carry military, naval, and police forces, 471—474.

providing proper third class accommodation, 474, 475.

providing workmen's trains, 475—480.

trains not to be provided for prize fights, 480, 481.

communication between passengers and guard, 481.

smoking compartments to be provided, 482.

duty of railway company to carry all who offer themselves to be carried, 484.

railway companies cannot carry on business as omnibus proprietors, 485.

right to exclude persons from railway station, 485, 486.

passenger entitled to all reasonable and usual accommodation, 486, 487.

PASSENGERS, CARRIERS OF, BY RAILWAY—*continued*.I.—*Generally*—*continued*.

- overcrowding of railway carriages, 487 *et seq.*
- contract entered into with a passenger, 489, 529.
- effect of tickets issued, 489 *et seq.*
- contract the same whether journey over company's own line or not, 492.
- effect of time-tables issued, 492 *et seq.*
- no break of journey, 500.
- liability for delay, 500 *et seq.*
- when bound to provide special train owing to failure to keep time, 497, 501.
- damages for delay of a passenger, 493 *et seq.*

II. *Fares*,

- illegal, how far a refusal of facilities, 328, 329.
- power to charge, 503.
- power to vary, 236.
- jurisdiction of Rates Tribunal over, 503, 504.
- standard fares to be settled, 504.
- power to charge fares below standard fares, 505.
- list of fares to be exhibited, 505.
- refusal of passenger to leave carriage on arrival at destination, 506.
- passenger to produce and deliver up ticket on request, 506.
- offences by railway passengers, 506 *et seq.*
- ticket to state fare charged, 510.
- power to remove passengers from trains, 510, 515 *et seq.*
- penalty for travelling with attempt to avoid payment of fare, 507.
- through fares. *See* THROUGH RATES.

III. *Bye-laws*,

- power of company to make, 511.
- must be confirmed and allowed by Ministry of Transport, 513.
- text of bye-laws submitted to the Ministry of Transport, 514 *et seq.*
- as to travelling without ticket, 515—519.
  - room at and fares to intermediate stations, 519, 520.
  - altering and selling tickets, 521.
- when carriage full, 522.
- as to compartments for women, 522.
  - travelling in luggage and guards' vans, 522.
  - opening lift, &c. doors, 523.
  - entering train in motion, 523.
  - infectious persons, 523.
  - intoxicated persons, 523.
  - using indecent language, &c., 524.
  - dogs, &c. in carriages, 524.
  - fire-arms in carriages, 524, 525.
  - smoking, 525.
  - damaging, &c. carriages, 525.
  - selling and betting, &c. in stations and carriages, 526.

PASSENGERS, CARRIERS OF, BY RAILWAY—*continued*.III. *Bye-laws*—*continued*.

as to throwing bottles, &c. out of windows, 526.

drivers of cabs, &c. in station yard, 526.

spitting, 527.

may publish accurate accounts of convictions without being liable for libel, 527.

IV. *Degree of care required from Railway Company*,

not liable as insurers, but for negligence only, 528 *et seq.*

liability for acts of other passengers, 530 *et seq.*

liable in tort, 535.

liability limited by Merchant Shipping Act, 1894, in case of sea transit, 536.

liability under Lord Campbell's Act for injuries producing death, 537.

passenger travelling at his own risk, 540—542.

with free pass, 530, 541.

liability of, where fare not paid, 543.

liability to trespassers, 543.

duty of, to persons seeing passengers off by train, 551.

liability for injuries at level crossings, 546 *et seq.*

liability when exercising statutory powers, 552.

municipal authorities protected by Public Authorities Protection Act, 554.

V. *Evidence of negligence*,

collision between two trains, *prima facie* evidence of negligence, 555.

train running off the line, *prima facie* evidence of negligence, 555.

functions of judge and jury, 556 *et seq.*

contributory negligence, 558 *et seq.*

what amounts to an invitation to a passenger to alight, 560.

bound to provide means of access to and egress from their carriages, and stations, 563.

bound to take reasonable care of premises that persons coming there not unduly exposed to danger, 563.

VI. *Compensation for injuries*,

the measure of damages, 567 *et seq.*

for nervous shock, 567.

money received on an accident insurance policy not to be deducted, 569.

arbitration of damages, 569.

order for medical examination of person injured, 569, 570.

## PASSENGERS, CARRIERS OF, BY ROAD,

I. *Generally*,

when bound to convey persons who offer themselves to be carried, 571.

are entitled to receive fare when seat engaged, 571.

bound to carry the whole journey, 572.

**PASSENGERS, CARRIERS OF, BY ROAD—continued.**

**I. Generally—continued.**

- must carry within reasonable time, 572.
- must carry with reasonable speed, 572.
- measure of damages for breach of contract to deliver at destination, 572, 573.
- not insurers, but liable for negligence, 573.
- when master liable for negligent driving by servant, 573.
- not liable for injury from inevitable accident, 573.
- common carriers cannot limit liability for negligence without option of alternative fare, 575.
- bound to provide conveyances reasonably strong and sufficient for journey, 575.
- bound to provide careful drivers of reasonable skill and good habits, 576.
- bound to employ horses steady and not vicious, 576.
- accidents through driving on wrong side of the road, 577.
- obligation to avoid injury to foot passengers, 577.
- obligation to carry luggage, 578.
- nature of contract with passenger, 578.

**II. Stage coaches or carriages,**

- definition of, 579.
- must bear name of proprietor, 580.
  - number of passengers constructed to carry, 580.
- regulations as to carriage of luggage, 581.
  - on tramcars, 583.
- non-payment of fare on tramway, 581.
- servant of corporation exceeding powers, 582.
- workmen's tramcars, 583.
- fares chargeable on tramcars, 583, 584.

**III. Hackney carriages,**

- definition of, 579.
- outside Metropolis, 584—588.
- in Metropolis, 588—595.
- licensing authority, 584, 588.
- driver bound to drive, 586, 590, 591.
- bye-laws as to, 587.
- registered proprietor of, liable to public, 588.
- penalty for plying unlicensed, 589.
- admission of, to railway station, 592.
- regulations as to carriage of luggage, 592, 593.
- fares chargeable, 593, 594.
- table of fares to be exhibited, 594, 595.

**PASSENGERS' LUGGAGE. See LUGGAGE OF RAILWAY PASSENGERS.**

**PAYMENT,**

- carrier entitled to be paid in advance, 24, 128.
- must be reasonable, 24.

**PENALTY,**

- for failure to keep rate-books and allow inspection, 272.
- for travelling without ticket, 507.
- for offence against bye-laws, 514, 515.

**PERCENTAGE,**

- upon excess value of animals, 419 *et seq.*

**PERISHABLE GOODS,**

- when carrier may sell, 47, 80.
- should, if possible, obtain owner's instructions, 80.
- on sale of, implied warranty that they will be fit on arrival, 99.
- where delivery delayed, loss at the risk of the party in fault, 99.
- carrier not liable for ordinary wasting or decay, 37, 41, 42.
- otherwise where loss caused by him, 43.
- forwarded by next train, 112.
- interruption of transit, sale of, as agent of necessity, 175.
- railway company must afford facilities for carriage of, 282, 283.

**PERMISSIVE POWERS,**

- railway company cannot be compelled to exercise, 320.
- of canal company, 323.

**"PERSON INTERESTED,"**

- on application for dissection of rates, 266.

**PERSONAL LUGGAGE. See LUGGAGE OF RAILWAY PASSENGERS.****PICTURES,**

- are within Carriers Act, 1830...51.
- damages where no increased rate demanded, 58.

**PIDCOCK'S CASE,**

- rule in, 267, 290, 291.

**PIGS,**

- limitation of railway company's liability for, 419, 612.

**PIRATES, LOSS BY. See KING'S ENEMIES.****PLATE AND PLATED ARTICLES,**

- are within Carriers Act, 1830...51.

**POSTMASTER-GENERAL,**

- not a common carrier, 20.
- can require railway company to convey mails, 307.

**POST OFFICE,**

- carriage of mails, 307 *et seq.*
- remuneration to railway company for carriage of mails, 309.

**PRECIOUS STONES,**

- are within Carriers Act, 1830...51.

**PREFERENCE.** *See* **UNDUE PREFERENCE.**

**PRESUMPTION,**  
of carrier's liability, 45.

**PRIVATE CARRIERS FOR HIRE,**  
definition of, 6.  
whether a man is a common carrier or private carrier is a question of fact, 6, 7.  
there is no intermediate class, 7.  
bound to exercise reasonable care, 8.  
loss of or damage to goods is evidence of want of care, 9.  
if goods stolen, bound to use diligence to recover them, 9.  
not responsible if owner of goods conduces to their loss, 9.  
not liable if goods are under entire control of owner during transit, 9.  
liable if goods under their control, even though owner exercises supervision, 10.  
by warranting safety of goods, assume responsibility of common carriers, 10.

**PRIVATE SIDING.** *See* **SIDING (PRIVATE.)**

**PROMISSORY NOTES,**  
are within Carriers Act, 1830 ..51.

**PROPERTY IN THE GOODS,**  
depends on the terms of the contract, 97, 98.  
how affected by provisions of sect. 4 of Sale of Goods Act, 1893...98.

**PUBLIC AUTHORITIES PROTECTION ACT, 1893...554.**

**PUBLIC INTEREST,**  
to be considered in cases of alleged undue preference, 375, 378.  
meaning of, 379 *et seq.*

**PUNCTUALITY,**  
contract of railway company as to, 180, 492 *et seq.*

**RAILWAY AND CANAL COMMISSIONERS,**  
reasonableness of traffic arrangements to be decided by, 430.  
may award damages, 392 *et seq.*  
to determine differences as to remuneration due to railway company for carriage of mails, 308.  
have sole jurisdiction as to granting facilities, 323, 324, 469.  
jurisdiction as to granting facilities for passenger traffic, 312 *et seq.*, 323.  
    facilities for private sidings, 329 *et seq.*  
    undue preference, 373 *et seq.*  
    legality of rate, 314.  
    to order through booking, 357.  
    in disputes between railway and canal companies, 315.  
power of Minister of Transport to appoint, as arbitrators, 315, 316.

**RAILWAY AND CANAL COMMISSIONERS—continued.**

- when power to order erection of new station, 317, 318, 319.
- application to, is proper remedy in case of undue preference, 393.
- no exclusive jurisdiction save in cases within Traffic Act, 1854...315.

**RAILWAY AND CANAL TRAFFIC ACT, 1854,**

- requires railway to give reasonable facilities for all traffic, 110 *et seq.*, 312 *et seq.*, 469, 470.
- s. 2 requires railway companies to combine to form continuous route, 313.
  - traffic to be sent at single booking, 357 *et seq.*
  - no undue preference to be shown, 373.
  - duty to carry animals, 416.
- s. 7, provisions of, as to special contract limiting company's liability, 136 *et seq.*
  - limited to contracts for carriage over railway of contracting company, 157.
  - applies to animals, 419.
  - limitation of liability in certain cases, 419.
  - applies to passengers' luggage, 443, 453 *et seq.*
  - does not apply to steam vessels owned by company, 162.
  - "neglect or default," meaning of, 137 *et seq.*
  - special contract to be in writing and reasonable, 139 *et seq.*

**RAILWAY AND CANAL TRAFFIC ACT, 1868,**

- s. 9, jurisdiction of Railway Commissioners in certain cases, 323, 330, 331.
- s. 10, jurisdiction of Railway Commissioners as to legality of rates, 261, 314.
- s. 11, agreement not a reason for refusal of facilities, 327.
- s. 12, Railway Commissioners may award damages, 392.
- s. 13, notice of complaint to be given, 393.
- s. 14, two or more companies may be ordered to combine to carry out order, 339.
- s. 17, appeals from Railway Commissioners, 220.
- s. 27, burden of proof on company in cases of preference, 376 *et seq.*
  - regard to be had for public interest in cases of preference, 378.
  - no preference to be given to foreign merchandise, 383.
- s. 28, provisions of s. 2 of Traffic Act, 1854, and of s. 14 of Regulation of Railways Act, 1873, to apply to steam vessels, 161, 385.
- s. 29, group rates, 386 *et seq.*
- s. 30, application by harbour and dock authority, 390.
- s. 55, definitions, 350, 374.

**RAILWAY COMPANY. See also GOODS AND PASSENGERS.**

- definition of, 350.
- obligations to carry, 107 *et seq.*, 112, 123.
- cannot insist on unreasonable conditions, 109, 139 *et seq.*
- may refuse to carry damageable goods not properly packed, 112.
- obligation to provide further train if train full, 111.
- must carry packed parcels at ordinary rates, 123.

## RAILWAY COMPANY—*continued*.

- right to be informed as to nature, &c. of goods, 125 *et seq.*
- entitled to be paid in advance, 128.
- duty to have stations safe, 128, 129.
- duty to have servants available to give directions as necessary, 129.
- bound by contract of their agent, 130.
- standard terms and conditions of carriage, 132 *et seq.*, 507 *et seq.*
- may make special contract as at common law in certain cases, 135, 136.
- entitled to protection of Carriers Act, 107.
- contract by, under s. 7 of the Railway and Canal Traffic Act, 1854...186 *et seq.*
- liability as to sea traffic, 160—164.
- liability in respect of carriage of animals, 416 *et seq.*
- when and to what extent common carriers of passengers, 13, 14, 484, 485.
- liability when exercising statutory powers, 552, 553.
- under Railway Fires Act, 1905...552, 553.

## RAILWAY FIRES ACT, 1905...552, 553.

## RAILWAY RATES TRIBUNAL,

- establishment of, 208.
- functions of, 208 *et seq.*, 210 *et seq.*
- constitution and procedure of, 216—219.
- appeal from, 219, 220.

## RAILWAY REGULATION ACT, 1844,

- mail guard travelling with mails, 307.

## RAILWAYS ACT, 1921.

- ss. 16, 17, reasonable facilities, 317 *et seq.*
- ss. 20—25, constitution and procedure of Rates Tribunal, 216—219.
- s. 26, appeal from Rates Tribunal, 219.
- s. 27, substitution of Rates Tribunal for Railway Commissioners in certain cases, 209.
- s. 28, powers of Rates Tribunal, 210 *et seq.*
- s. 29, classification of merchandise, 211.
- s. 30, submission of standard charges, 221.
- s. 31, settlement of standard charges, 221, 222.
- s. 32, obligation to charge standard charges, 230 *et seq.*
- s. 33, application of schedule of charges to non-group company, 232, 233.
- s. 34, repeal of provisions as to classification and charges for the carriage of merchandise, 233 *et seq.*
- s. 35, subsequent modification of standard charges, 236.
- s. 36, exceptional rates, 238 *et seq.*
- s. 37, new exceptional rates, 242, 243.
- s. 38, variation of exceptional rates, 244—247.
- s. 39, review of exceptional rates, 248.
- s. 40, disintegration of rates, 262 *et seq.*
- s. 41, exceptional fares, 251.
- s. 42, submission of standard terms and conditions, 132.



**RAILWAYS ACT, 1921—continued.**

- s. 43, settlement of standard terms and conditions, 132, 133.
- s. 44 (1), merchandise to be at company's risk rates in absence of special contract, 134.
- s. 44 (2), railway company not compellable to carry goods improperly packed, 112, 113, 135.
- s. 44 (3), trader and company may agree in writing for special terms, 135.
- s. 45, amendment of standard terms and conditions, 133.
- s. 46, owner's risk rates, 249, 250.
- s. 47, through rates and fares, 347 *et seq.*, 361.
- s. 48, minimum distance charges, 253.
- s. 49, collection and delivery of merchandise, 201, 202, 255 *et seq.*
- s. 50, Railway Rates Tribunal to determine what are dangerous goods, 114.  
power to make bye-laws as to carriage of dangerous goods, 115.
- s. 51, charges on jointly owned lines, 257.
- s. 52, charges for competitive traffic, 258.
- s. 53, fares on ships, 260.
- s. 54, publication of rates and rate books, 268 *et seq.*
- s. 55, miscellaneous provisions as to rates, 273 *et seq.*
- s. 56, amendment of certain Acts, 53, 161.
- ss. 58, 59, adjustment of charges to revenue, 226 *et seq.*
- ss. 60, 61, charging powers of railway companies till "appointed day," 223.
- s. 75 (1), forwarding of traffic, through services, 338 *et seq.*
- s. 75 (2), facilities in force on 1st August, 1914, to remain in force, 324,  
343 *et seq.*
- s. 75 (4), local routes, 345.
- s. 85, definition of "railway company," 351.
- sched. 4, form of schedules of charges, 222.
- sched. 5, miscellaneous provisions as to rates, 273 *et seq.*
- sched. 6, amendment of certain Acts, 53, 54, 125, 126, 161.

**RAILWAYS CLAUSES ACT, 1845,**

- s. 76, communications with private branch railways, 329.
- s. 90, charges must be equal for all, 366 *et seq.*
- s. 94, milestones to be erected along railway line, 271.
- s. 95, no tolls payable unless boards and milestones erected, 271.
- s. 97, power to detain and sell carriages or goods if tolls not paid, 204, 205.
- s. 98, owner of goods to give exact account as to same, 125.
- s. 99, penalty for giving false account, 126.
- s. 103, passenger to quit carriage at destination, 506.
- s. 105, railway company not compelled to carry dangerous articles, 113.
- s. 108, power to make regulations, 511.
- s. 109, power to make bye-laws, 512 *et seq.*

**RAILWAYS (PRIVATE SIDINGS) ACT, 1904...330 *et seq.*****RATE OF CHARGE,**

- carrier must notify increase of, by notice in office, &c., 57.
- notice must be legible, 57.

**RATES AND CHARGES (RAILWAY),**

- establishment of Railway Rates Tribunal, 208.
- functions of Railway Rates Tribunal, 208 *et seq.*, 210 *et seq.*
- constitution and procedure of Railway Rates Tribunal, 216 *et seq.*
- appeal from Railway Rates Tribunal, 219, 220.
- to be settled by Railway Rates Tribunal, 221.
- standard charges, 221 *et seq.*
- charges include fares for conveyance of passengers and their luggage, 221.
- classification of schedules of charges, 222.
- "appointed day," meaning of, 221, 222.
- charging powers of railway companies till appointed day, 223—225.
- adjustment of charges to revenue, 226—230.
- obligation to charge standard charges, 230 *et seq.*
- charges for merchandise authorised by the Act. 231.
- repeal of existing charging powers, 233—236.
- subsequent modification of standard charges, 236, 237.
- exceptional charges, 238 *et seq.*
- new exceptional rates, 242, 243.
- variation of exceptional rates, 244—247.
- review of exceptional rates at instance of shipping and canal interests, 248, 249.
- owner's risk rates, 249, 250.
- exceptional fares, 251, 252.
- minimum distance charges, 253, 254.
- collection and delivery charges, 255 *et seq.*
- charges on jointly owned lines, 257, 258.
- charges for competitive traffic, 258, 259.
- fares on ships, 260.
- disintegration of exceptional rates, 262 *et seq.*
- publication of rates and rate books, 268—272.
- miscellaneous provisions as to rates, 273 *et seq.*
- Fifth Schedule to Railways Act, 1921,
  - replacing rates and charges orders, 273 *et seq.*
  - calculation of distance, 273.
  - calculation of charges on weight and measurement, 274.
  - traders' trucks, 274.
  - charges for sidings and accommodation, 276.
  - charges for transhipment, 277.
  - charges for use of trucks, 277 *et seq.*
  - return of empty trucks, 280.
  - charges for conveyance on railway of another company, 281.
  - dock and shipping charges, 282.
  - provisions as to perishables, 282.
  - charges for services not otherwise provided for, 283.
    - services in connection with sidings, 285.
    - collection and delivery outside terminal station, 291.
    - weighing merchandise, 291.
    - detention of trucks, 292.

**RATES AND CHARGES (RAILWAY)—continued.**Fifth Schedule to Railways Act, 1921—*continued*.

charges for loading or unloading, 297.

covering or uncovering, 297.

use of coal drops, 297.

loading or unloading from ships or barges, 297.

other miscellaneous services, 298.

differences to be determined by Railway Rates Tribunal, 298.

recovery of charges in Court of law, 300.

what included in standard charges, 300 *et seq.*

standard station terminal, 304.

standard service terminal, 304.

calculation of charges, 305.

articles sent in aggregate quantities, 305.

definition of "terminal station," 306.

"siding," 306.

"company," 306.

"trader," 306.

remuneration for carriage of Post Office mails, 307—311.

*See, further, THROUGH RATES AND FARES.***RATES AND RATE BOOKS,**publication of, 268 *et seq.*

schedules of standard charges deemed to be statutory rules, 268.

printed copies of classification of merchandise to be kept for sale by every railway company, 268.

classification of merchandise, &amp;c. to be kept available for inspection at every station, 268, 269.

schedules of charges, &amp;c. in operation on 14th January, 1920, to be available for inspection, 271.

to show proportion of land and sea rate in through rate, 271, 272.

penalty for breach of provisions as to, 272.

**REASONABLE ACCOMMODATION.** *See FACILITIES, DUE AND REASONABLE.***REASONABLE FACILITIES.** *See FACILITIES, DUE AND REASONABLE.***REASONABLE HOURS,**

tender of delivery within, 80, 75.

carrier's liability as involuntary bailee, 75, 79, 88.

**REASONABLE TIME,**

goods to be delivered for conveyance at, 80, 112.

delivery to consignee within, 74, 180 *et seq.*

carrier's duty to keep goods a, for consignee to claim in, 74, 77, 194.

carriage of animals within, 430—432.

carriage of passengers within, 492 *et seq.*, 572, 573.

**REASONABLENESS,**

- of alternative rate, question for judge, 149.
- cases as to, 148 *et seq.*
- of traffic arrangements, question for Railway Commissioners, 430.

**REBATE,**

- when trucks not provided, 278.
- when collection and delivery not performed by railway company, 258.

**RECEIVING,**

- duty to receive goods for conveyance, 23.
- packed parcels, 128.
- passengers, 484 *et seq.*, 571.
- when refusal to receive justified, 23.
- animals for conveyance, 416 *et seq.*

**RECEIVING HOUSE,**

- what is a, under the Carriers Act, 58.

**REFUSAL,**

- common carrier tendered reasonable remuneration may be sued for, 24.
  - to carry not justified by refusal to declare, 57.
  - carrier's duty if goods refused by consignee, 79—81.
  - to carry unless charges paid, 84.
  - to give receipt for goods, on demand, 58.
  - by buyer does not end transit, 102.
  - to deliver in exercise of lien, 151, 431, 434.
- See LIEN.*

**REGULATION OF RAILWAYS ACT, 1868,**

- s. 14, conditions limiting liability during sea carriage, 160, 424, 455, 456.
- s. 15, list of fares to be exhibited, 505.
- s. 16, equality of tolls on steam vessels, 371.
- s. 18, calculation of rates when two railways worked as one, 254, 503.
- s. 20, smoking compartments to be provided, 482.
- s. 22, communication with guard, 481.
- s. 36, special train may be appropriated for Post Office service, 307.

**REGULATION OF RAILWAYS ACT, 1871,**

- s. 12, as to steam vessels, 161, 423.

**REGULATION OF RAILWAYS ACT, 1873,**

- s. 3, definition of "railway company" and "canal company," 350.
- ss. 18, 19, 20, as to carriage of mails, 308.

**REGULATION OF RAILWAYS ACT, 1889,**

- s. 5, passenger to produce ticket on request, 507.
- s. 5, penalties for travelling without ticket, 507.
- s. 6, ticket to state amount of fare, 510.
- s. 7, power to make bye-laws as to use, &c. of station, 512, 513.

**REMOVAL OF PASSENGER FROM TRAIN, 510, 511, 515 *et seq.***

**REPRESENTATIONS OF RAILWAY SERVANT,**  
and no time-tables, 181.

**RESPONSIBILITY OF COMMON CARRIERS,**  
fixed by the acceptance of the goods, 27.  
in absence of special stipulation, continues until goods reach final destination, 30.

**RETURNED EMPTIES. *See* EMPTY PACKAGES.**

**RIOT,**  
loss caused by, 43.

**RIGHT OF ACTION. *See* PROPERTY IN THE GOODS.**

**RIGHT OF CARRIER,**  
to be informed of dangerous articles and to open packages, 26.  
waiver of right, 27.

**ROBEERS,**  
carrier liable for acts of, at common law, 44.  
gratuitous carrier liable if loss due to want of ordinary diligence, 4.  
private carrier for hire not liable for loss by, unless due to want of diligence, 9.  
carrier may indict person stealing the goods, 82.  
what amounts to possession by, 44.  
no protection given by Carriers Act when loss due to theft by servant, 60, 61.

**ROMAN LAW,**  
not the foundation of English law as to carriers' liability, 38.

**ROUTE,**  
common carrier not bound to carry by shortest, 72, 165.

**RUNNING POWERS,**  
liability of company exercising, 529.

**SALE OF GOODS ACT, 1893,**  
delivery to carrier for conveyance to buyer ends vendor's lien, 89.  
provisions of, as regards functions of carriers, 92—106.  
stoppage *in transitu*, 99—106.

**SEA TRANSIT,**  
common carrier may include one by land and water, 54.  
where goods sent by, notice to be given to buyer, 96, 97.

**SEA TRANSIT—continued.**

liability of railway company during, 160—164.

limitation of liability under Merchant Shipping Act, 1894...163 *et seq.*,  
536, 537.

Carriers Act applies where one entire contract by land and sea, 64.

liability of company in conveying animals by, 423.

passengers' luggage by, 455, 456.

**SECURITIES,**

for payment of money are within Carriers Act, 51.

**SELLER AND BUYER. See VENDOR AND VENDEE.****SERVANTS,**

loss from felonious act of, 60.

who are, of carrier, within meaning of Carriers Act, 60.

ratification of contract of carriage made by his servants binds common  
carrier, 29.

bound by representation of, at carriers' office, 25, 58, 131.

delivery to, is sufficient, 58.

gross negligence of, but conditions of Carriers Act not complied with, 61.

duty of railway to have sufficient, 129.

who are, of company, 130, 131.

negligence of, in driving. master responsible, 574, 588.

**SERVICE TERMINAL, 304.**

includes covering and uncovering, 304.

loading and unloading, 304.

rebates when not performed by railway company, 256.

**SERVICES,**

under Fifth Schedule of Railways Act, 1921...283 *et seq.*

services at private sidings, 285 *et seq.*

collection and delivery outside terminal station, 291.

weighing merchandise, 291.

detention of trucks, 292 *et seq.*

loading, unloading, covering and uncovering in certain cases, 297.

use of coal drops, 297.

accommodation at wharf, 297.

differences as to charges to be settled by Railway Rates Tribunal, 298.

what services may be charged for, 283 *et seq.*

**SHEEP,**

limitation of company's liability for, 419, 612.

**SHIPS,**

when owners liable as common carriers, 18, 19.

*See* STEAM VESSELS.

**SIDING (PRIVATE),**

- services at, are special service under Fifth Schedule of the Railways Act, 1921...285 *et seq.*
- what is a private siding, 285.
- charges for siding for private use of trader, 276, 277.
- private siding connections, 329 *et seq.*
- receiving traffic at a private siding is a reasonable facility, 330, 331.
- when an undue preference, 401, 402.

**SIDING (RAILWAY COMPANY'S),**

- company may charge rent for, 293, 297.
- charge for rent not an increase of rate, 297.
- time allowed for unloading trucks on, 293, 294.

**SIDING CONNECTION, 329 *et seq.***

- right to, 330, 331.
- removal of, 333.
- when may amount to undue preference, 401, 402.

**SILKS,**

- protection of Carriers Act, 1830, repealed as to railways, 51.

**SILVER. *See* CARRIERS ACT, 1930...51.****SMOKING,**

- compartments to be provided in train, 482.
- bye-law prohibiting, elsewhere on railway, 525.

**SPECIAL ACT,**

- construed against railway company, 177, 178.
- rates fixed by, as result of agreement between parties, apply to all traffic, 260, 261.
- provisions of, as to granting facilities, 323.
- railway company's liability when exercising powers of, 552.

**SPECIAL CONTRACTS,**

- by common carrier of goods, 28, 64—71.
- how far affected by Carriers Act, 58, 59, 66.
- as to goods which carrier does not generally carry, 67.
- how construed, 69—71.
- when, exempting carrier from liability, apply, 68.
- to protect from negligence, must be in ordinary English, 69.
- to relieve carrier of duty to use reasonable skill and care must use plain language, 69.
- as to animals, 416 *et seq.*
- with passenger, 540 *et seq.*
- by railway company, 136 *et seq.*
- must be in writing, 139.

**SPECIAL CONTRACTS—continued.**

- railway company may limit liability by, if signed, 139.
- must contain just and reasonable conditions, 139 *et seq.*
- company's liability in case of negligence, 70, 71, 137.
- will not deprive carrier of lien unless inconsistent with such lien, 87, 89.
- in cases not within sect. 7 of Traffic Act, 1854, railway company may make, 157.
- as to liability for passengers' luggage, 453 *et seq.*
- as to alternative rates, 149 *et seq.*
- necessary even though goods carried by method which railway company are not bound to employ, 158.
- in case of railway company acting as warehousemen need not be signed, 454.

**SPECIAL SERVICES. See SERVICES.****SPECIAL TRAIN,**

- when ordinary train is late, 495 *et seq.*, 501.

**STAGE COACHES OR CARRIAGES, 579 *et seq.* See PASSENGERS, CARRIERS OF, BY ROAD.****STANDARD CHARGES, 221 *et seq.***

- to be settled by Railway Rates Tribunal, 221.
- include fares for conveyance of passengers and their luggage, 221.
- classification of schedules of, 222.
- "appointed day" for operation of, 221, 222.

**STANDARD FARES. See STANDARD CHARGES.****STANDARD RATES. See STANDARD CHARGES.****STANDARD TERMS AND CONDITIONS OF CARRIAGE,**

- to be settled by Railway Rates Tribunal, 132 *et seq.*
- form of, as settled,
  - A. For carriage of merchandise at companies' risk rates, 597.
  - B. For carriage of merchandise at owners' risk rates, 608.
  - C. For carriage of live stock at companies' risk rates, 611.
  - D. For carriage of live stock at owners' risk rates, 619.
  - E. For carriage of damageable goods at companies' risk rates, 621.
  - F. For carriage of coal, coke and patent fuel, 624.

**STATION,**

- company must provide safe, 128, 563 *et seq.*
- Railway Commissioners can order erection of new, 317 *et seq.*
- due and reasonable facilities at, 317 *et seq.*
- undue preference in admitting vehicles to yards of, 412.



**STATION—continued.**

meaning of, within Post Office Parcels Act, 1882...310, 311.

right to exclude passengers from, 485, 486, 526.

bye-laws as to use, &c. of, 512.

conduct of drivers of vehicles in station yard, 526.

negligence of company in not providing safe and proper accommodation at, 563 *et seq.*

privileged cabs at stations in London abolished, 592.

**STATION MASTER,**

authority of, 130.

agent to deliver, 186, 189.

**STATION TERMINAL,**

meaning of, 304.

**STATUTE,**

rule for construction of special Act of company, 177, 178.

liability of company when exercising power given by, 552.

**STEAM VESSELS,**

when Traffic Act, 1854, applicable to, 161.

limitation of owners' liability, 163 *et seq.*, 536, 537.

through rates, by, 361—363.

equal tolls on, 371, 372.

**STONES (PRECIOUS),**

are within Carriers Act, 1830...51.

**STOPPAGE IN TRANSITU,**

when right arises, 99.

when goods in course of transit, 100, 101, 102.

if buyer takes goods out of carrier's possession before arrival at destination the right of, at an end, 101.

cannot be exercised when carrier holds as warehouseman, 101.

transit ended by carrier acknowledging that he holds goods for buyer, 101.

transit continues notwithstanding rejection of goods, 102.

goods on ship chartered by buyer, 103.

wrongful refusal by carrier to deliver to buyer ends transit, 103.

when, notwithstanding part delivery, exercisable, 103.

notice of, 103, 104, 105.

propositions laid down by the Court of Appeal as to, 106.

**TAXIMETER,**

cab fares, 593, 594.

**TERMINALS. *Ses* SERVICE and STATION TERMINALS.**

**THEFT,**

loss caused by, 43, 44.

Carriers Act, 1830, no protection against theft by servant, 60, 61.  
not in itself neglect or default of carrier, 137.

**THIEVES. See ROBBERS.**

**THROUGH BOOKING, 357, 358. .**

liability of railway company as to transit off their own line, 169 *et seq.*,  
457—460.

liability of company receiving from another, 170.

test of liability, 169, 170.

is one contract, 171.

onus of proof as to damage having occurred after transfer to another  
company, 458.

carrying company liable, 176, 458.

a reasonable facility, 357.

application for, not granted as of right, 357.

**THROUGH RATES AND FARES,**

statutory provisions as to granting of, 347 *et seq.*

Railway Rates Tribunal to decide objections to, 347, 348.

application by railway company for, 351 *et seq.*

interference with existing rates, 354 *et seq.*

through booking, 357, 358.

reasonable route, 358 *et seq.*

through land and sea routes, 361 *et seq.*

apportionment of, 363—365.

**THROUGH TRAFFIC,**

where company receiving, liable during whole transit of goods, 169 *et seq.*,  
457.

liability of company receiving from another, 170, 458.

obligation to forward on continuous route, 312 *et seq.*

*See* THROUGH BOOKING.

**TICKET, RAILWAY,**

effect of granting a, and contract thereby made, 489 *et seq.*, 529 *et seq.*  
conditions on, 499.

production of, 506.

travelling without, 507, 515.

to state amount of fare, 510.

cloak room ticket, 463 *et seq.*

**TICKET, TRAMWAY,**

effect of granting a, and contract thereby made, 578.

**TIMBER,**

measurement of, under Fifth Schedule of the Railways Act, 1921...274.

**TIMEPIECES,**

are within Carriers Act, 1830...52.

**TIME TABLES,**

when no, published, 131.

what promise publication of, amounts to, 492 *et seq.*

words in, importing contract to use due attention to keep times specified in, 492 *et seq.*

**TITLE DEEDS,**

are within Carriers Act, 1830...52.

**TOLLS,**

meaning of, 126, 205, 367.

railway company empowered to detain and sell carriages or goods if tolls not paid, 204, 205.

*See RATES AND CHARGES.*

**TORT,**

action in, for loss of luggage, 444, 445.

for personal injury, 535, 536.

**TRANSPORT CONTRACTORS,**

who stipulate first to inspect and then fix price are not common carriers, 22.

**TRANSHIPMENT,**

charges for, on railway, 277.

**TRANSIT,**

when goods are in course of, 100—106.

and no contract between seller and carrier, 94.

when ended, 100—103.

liability for ordinary and extraordinary deterioration in transit, 98.

*See STOPPAGE IN TRANSIT.*

**TRINKETS,**

are within Carriers Act, 1830...52.

a trinket defined, 52.

**TROOPS,**

obligation on company to convey, 471 *et seq.*

statutory fares for, 472.

**TROVER,**

when carrier liable to action of, 76.

**TRUCKS,**

company liable for defects in, 165, 166.

of private traders, obligation of company as to, 174.

**TRUCKS—continued.**

- demurrage of, 274.
- duty to examine foreign, 166, 530.
- new trucks carrying goods cannot be charged for, 281, 337.
- when their provision is included in standard conveyance rate, 390 *et seq.*
- detention of railway company's trucks, 292 *et seq.*
- detention of trader's trucks, 274, 275.
- charges for, when not included in conveyance rate, 277 *et seq.*
  - minimum truck load in certain cases, 306.
- no charge for return of empty, 280, 281.
- time allowed for unloading, 194 *et seq.*
- provision of, 334.
- facilities for privately-owned, 336 *et seq.*
- obligation to cleanse, used for animals, 424, 429, 430.
- provision of, for animals, 424.
- liability of company for accident caused by unsound, 528 *et seq.*

**"ULTRA VIRES."**

- undue preference not, 415.
- omnibus business carried on by railway company is, 485.

**UNDUE PREFERENCE,**

- meaning of, 373.
- common carrier not bound at common law to charge all persons equally, 84.
- statutory obligations on company to avoid, 366 *et seq.*
- company may vary tolls if charged equally to all persons, 366.
- equality of treatment, 366—373.
- action for infringement of equality clause, competition no defence to, 371.
- no limit to matters to be considered by Railway Commissioners, 373.
- company refusing credit or ledger account, 375.
- burden of proving difference in charge not, 376.
- "similar merchandise," 376, 377.
- "difference in treatment," 377, 378.
- remote source of supply rendered available, 379.
- foreign merchandise not to be preferred, 379, 383, 384.
- special provision as to warehouse, collection and delivery charges, &c., 384.
- applied to combined sea and land transit, 371, 372, 385, 386.
- grouping of places in districts, 386 *et seq.*
- group rates, 386 *et seq.*
- complaint by port or harbour authority, 390 *et seq.*
- power of Railway Commissioners to award damages, 392.
- when no damages to be awarded, 393.
- proper remedy of trader claiming damages for, 393.
- measure of damages, 396.
- trader prejudiced by giving of, may complain, 397.

**UNDUE PREFERENCE—continued.**

- competition between two companies to be regarded, 398.
- competition by sea, 399.
- question of fact whether competition sufficient answer, 399.
- refusal to make or continue siding connection may be, 401.
- cost of carriage to be regarded, 402, 408.
- quantity and regularity of dispatch to be regarded, 403 *et seq.*
- result of bargain, benefit of which railway company has already enjoyed, 405.
- considerations collateral to pecuniary interests of company not to be regarded, 406.
- "level up" or "level down" existing rates, 407.
- railway company may not prefer themselves to other carriers, 408 *et seq.*
- rebate off collection and delivery rate where service not performed, 408.
- when arrangements in favour of particular vehicles at a station are, 412, 413.
- complaint as to favouring particular town, 413, 414.
- mileage an important factor, 414.
- railway company against whom no relief sought should not be joined as defendants, 414.
- is not an act *ultra vires* the company, 415.
- no right to shareholder to bring action for an account, 415.

**UNPUNCTUALITY,**

- liability for, in case of goods traffic, 181 *et seq.*
- in case of passenger traffic, 492 *et seq.*

**VALUE,**

- meaning of, in Carriers Act, 1830...53, 64.
- percentage on excess, 419—422.

**VENDOR AND VENDEE OF THE GOODS,**

- when delivery by vendor to carrier amounts to a delivery to the vendee, 92.
- the carrier is only agent for receiving and carrying the goods for his employer, 93.
- the receipt of goods by a carrier not an acceptance within Sale of Goods Act, 1893...93.
- acceptance defined, 93.
- vendor must make reasonable contract with carrier, 94.
- what amounts to delivery under c.i.f. contract, 95.
- where goods sent by sea notice to be given to vendee, 95.
- where no notice given, during sea transit, goods are at vendor's risk, 96.
- who should sue carrier in case of goods being lost through his negligence, 96.
- where goods lost, *prima facie* the proper person to sue is he in whom property vested during transit, 96.
- but *secus* where special contract, 96, 97.

**VENDOR AND VENDEE OF THE GOODS—continued.**

in case of loss or damage, right of compensation depends on terms of contract, 97.

who liable for ordinary and extraordinary deterioration in transit, 98.

*See* STOPPAGE IN TRANSITU.

**VICE,**

inherent, 41, 427—429.

**WAGONS,**

when proprietors are common carriers, 13, 15.

when not, 21, 22.

*See* TRUCKS.

**WAREHOUSEMEN,**

liability of carriers when, is from the acceptance of the goods, 27, 28.

when goods to be carried to a named destination and then deposited in warehouse, 78, 79.

bound only to use proper care, 35, 77, 194.

carriers after fulfilling contract to carry may become, 77, 78, 194 *et seq.*

when carriers become, 35, 194 *et seq.*

railway company holding goods as warehousemen must take proper care of same, 194.

railway company holding goods as warehousemen are entitled to recover reasonable expenses of protecting goods, 194.

'goods to be left till called for,' 77, 451, 452.

of luggage deposited in cloak room, 463 *et seq.*

when consignee refuses to accept goods, 193.

goods destroyed by fire in warehouse, 35.

carriers retaining goods as a lien for price of conveyance cannot charge for warehousing, 90.

goods held by carriers as, not liable to stoppage *in transitu*, 101.

the right to retain for charges of carriage depends on arrangement between the parties, 102.

goods held by, at owner's risk, 195.

**WAREHOUSING GOODS. *See* WAREHOUSEMEN.****WATCHES,**

are within Carriers Act, 1830...52.

**WATER,**

where contract by land and water Carriers Act may apply, 49, 54, 64.

carrier by, entitled to protection of Merchant Shipping Act, 64.

**WEAR AND TEAR,**

ordinary, carrier not liable for, 41, 42.

precautions to be used to lessen, 46, 47.

**WEIGHING GOODS,**

- a special service under Fifth Schedule of the Railways Act, 1921...291, 292.
- how far a facility, 324.

**WEIGHT,**

- calculation of, under Fifth Schedule of the Railways Act, 1921...274, 305.

**WHARF,**

- accommodation at waterside wharf is special service under Fifth Schedule of Railways Act, 1921...297.

**WHARFINGER,**

- liable to take same degree of care as a warehouseman, 35.
- See* WAREHOUSEMEN.

**WILFUL MISCONDUCT,**

- negligence by carrier amounting to, 154.
- contract relieving against liability except upon proof of, 154.
- what is, within special contract, 154 *et seq.*
- onus of proving, 154.

**WORKING EXPENSES. *See* ADJUSTMENT OF CHARGES TO REVENUE.****WORKMEN'S TRAINS, 475 *et seq.*****WRITINGS,**

- within Carriers Act, 1830...52.
- as to value of, 53.
- when value to be declared, 52.







